IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	)	BK. NO: 08-36705-BJH
	)	
SUPERIOR AIR PARTS, INC.	)	
D E B T O R.	)	

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TRANSCRIPT OF PROCEEDINGS

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BE IT REMEMBERED, that on the 11th day of August, 2014, before the HONORABLE BARBARA J. HOUSER, United States Bankruptcy Judge at Dallas, Texas, the above styled and numbered cause came on for hearing, and the following constitutes the transcript of such proceedings as hereinafter set forth:

A P P E A R A N C E S

PASSMAN & JONES
1201 Elm Street, Suite 2500
Dallas, Texas 75270
BY: Mr. Jerry Alexander
Mr. Christopher Robison

APPEARING ON BEHALF OF SUPERIOR AIR PARTS

SIMON, RAY & WINIKKA
2525 McKinnon Street, Suite 540
Dallas, Texas 75201
BY: Mr. Craig Simon
Mr. Daniel Winikka
Mr. Paula Reichenstein

APPEARING ON BEHALF OF THE INSOLVENCY ADMINISTRATOR

I N D E X

E X H I B I T I N D E X

P R O C E E D I N G S

THE COURT: We have continued hearings on a motion to enforce filed by the reorganized debtor, Superior Air Parts.

I'll take appearances of counsel, please.

MR. ROBISON: Good morning, Your Honor. Chris Robison and Jerry Alexander for the reorganized debtor.

MR. SIMON: Good morning, Your Honor. Craig Simon, Dan Winikka, and Paula Reichenstein for the Insolvency Administrator.

THE COURT: Very well.

All right. Are we ready to resume?

MR. ROBISON: Your Honor, may I raise one housekeeping matter prior to Mr. Simon calling his first witness?

THE COURT: You may.

MR. ROBISON: When Mr. Chatten was on the stand, one of Superior's witnesses, I questioned him about Superior Exhibit 57, which was a summary of the directories on the TAE server where the, what we referred to as TAE labeled drawings and CAD models are located that Superior was seeking to be returned. I neglected to just move that document into evidence. And I was wondering if I might move that into evidence prior to Mr. Simon calling his witnesses.

THE COURT: And, I'm sorry, that's Exhibit 56?

MR. ROBISON: 57.

THE COURT: 57. Any objection?

MR. SIMON: Your Honor, no. And I have a similar issue to raise with the Court, as well.

THE COURT: All right.

MR. SIMON: We went through two organization charts with one of our witnesses. I believe the first one was Exhibit 18 and the second one was Exhibit 19. And so I believe 18 was admitted, but 19 was not. And we would ask that Exhibit 19 be admitted.

THE COURT: Any objection?

MR. ROBISON: No objection, Your Honor.

THE COURT: Both of those are admitted.

MR. SIMON: Thank you, Your Honor.

And by the way, I believe the Court had requested better copies of those and we do have those with us in the courtroom. So we will provide those to Your Honor.

THE COURT: Excellent. Good.

All right. Please.

MR. SIMON: Again, for the record, Craig Simon, Your Honor. The Insolvency Administrator calls Charles Dedmon to the stand.

THE COURT: Mr. Dedmon, if you'd come forward, please.

And you'll take the witness chair. And, yes, that's

fine. Thank you. And before you sit down, if you'll raise your right hand and we'll swear you in.

(The witness was sworn by the courtroom deputy.)

CHARLES DEDMON

The witness, having been duly sworn to tell the truth, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. SIMON:

Q. Good morning, sir.

A. Good morning, Mr. Simon.

Q. Mr. Dedmon, would you please state your full name for the record.

A. Charles Dedmon.

Q. And, Mr. Dedmon, what do you currently do for a living?

A. Currently I am basically a consultant for different phases of the aviation industry.

Q. And how long have you been a consultant in the aviation industry?

A. Approximately 15 years.

Q. And before that, what did you do?

A. Well, before I owned a company called Aircraft Technology. And that would be from 1990 to '98. And prior to that, I was an employee of Superior Air Parts from 1967, '68, somewhere in there, until January of 1990.

Q. Okay. Now, I'm going to walk through some of your experience at Superior Air Parts in a little bit more detail in just a minute.

A. May you speak just a little --

Q. I'm sorry.

A. Just a little bit.

Q. And please tell me if you can't hear me. I'm happy to stop and speak up.

A. Great.

Q. Mr. Dedmon, so the Court is aware of some of the history of the proceedings here. You were listed on Superior Air Parts' witness list to testify in connection with this motion to enforce, correct?

A. Yes.

Q. And, in fact, you were designated as the corporate representative pursuant to a deposition notice that the Insolvency Administrator issued to Superior Air Parts to testify as it's 30(b)(6) representative, correct?

MR. ALEXANDER: Objection, Your Honor, that mis-states the record. He was designated as one of the 30(b)(6) representatives, not the 30(b)(6) representative.

MR. SIMON: That's correct.

THE COURT: Very well.

MR. SIMON: That's correct. I'm sorry if I mis-spoke.

Q. You were one of Superior's corporate representatives pursuant to our deposition notice issued to Superior Air Parts, correct?

A. That's correct.

Q. Okay. So let's -- let's talk a little bit, sir, about your history with Superior Air Parts. It was -- in fact, it was your father who founded the company years ago, wasn't it, sir?

A. That's correct.

Q. And as you already testified, you worked at Superior from 1967 or '68 through 1990, including a stint during that period as Superior's president, correct?

A. Of Superior's what?

Q. President.

A. Oh, as a --

Q. You were the president of Superior?

A. Yes. That's correct. Yep.

Q. Sorry.

A. That's all right.

Q. I'm going to do my best here to --

A. It's a personal problem.

Q. I understand, sir.

So that's 22 or 23 years during that time period, right?

A. Yes.

Q. And one of the things that you were responsible for was dealing with the FAA on certification issues, correct?
A. That's correct.
Q. And then from 1998 through 2003, you also did some work for Superior as a consultant, correct?
A. Correct.
Q. And that included during that time period also doing work on certification of PMA parts, correct?
A. Correct.
Q. And then in -- so that's '98 through 2003. And then in 2003, you joined the company full-time as an employee, again, as its president and chief executive officer, correct?
A. Yes. But understand, from October 2003 to 2005, I was being retained as a consultant, as opposed to an employee. But my job was president and CEO.
Q. Okay. You were full-time president and CEO, but you were a consultant, as opposed to an employee?
A. That's correct.
Q. Okay. Thanks for the clarification.
All right. So you have a long and involved and detailed history of Superior, correct?
A. Correct.
Q. Now, with respect to the topics on which you were one of Superior's designated representatives in the

deposition, sir, one of those topics related to Superior's acquisition of the information that's contained on the drawings that are at issue in this case, correct?

A. Correct.

Q. And another topic on which you were a Superior designated corporate representative was the nature and extent of any engineering work that was done by TAE, Thielert Aircraft Engines, correct?

A. That's correct.

Q. Okay. Let's talk about the second of those topics, the nature and extent of the engineering work that was done by TAE first, okay?

A. Yes.

Q. Now, you know, don't you, sir, that TAE did engineering work related to the SAP parts, you just don't know the specifics for any particular part, correct?

A. Well, what I do know is that, yes, they may have done some engineering work in regard to manufacturing the part, but to the best of my knowledge, they didn't do any engineering of the part before it was sent to them. They only did engineering on the way to make it on their equipment.

Q. Okay. So you agree that TAE did engineering work, you just believe it was on the manufacturing end, as opposed to the design end; is that fair?

A. I'm sure they didn't do any on the design end.
Q. Okay. But you agree that TAE did do engineering work on the manufacturing end of the parts that it supplied to Superior, correct?
A. Yes. But just with regard to their ability to make the part to the Superior drawing on their equipment.
Q. I understand, sir.
You were here for Mr. Marwill's testimony back on July 22nd, correct?
A. Yes.
Q. You were in the courtroom during the initial phase of this hearing?
A. Yes.
Q. Okay. And because you were here you, I believe, heard Mr. Marwill testify that most vendors who are suppliers who are making parts don't create separate drawings, correct? Do you remember hearing him say that?
A. I believe so. But that is true, yes.
Q. Okay. Well, in fact, sir, you know that a supplier such as TAE would, in fact, need to create additional drawings in order to manufacture parts, at least for the parts that aren't simple, don't you, sir?
A. That's correct. Other suppliers have also done the same.
Q. Right. In fact, the way it works is after a

supplier, like TAE, receives something like a two-dimensional drawing from a company such as Superior, the supplier does its own engineering work and its engineers may create its own drawings, including 3D drawings, and other manufacturing related information, true?

A. Well, they don't -- first place, they don't need to make their own drawings. But, secondly, depending on their machining capability and processes, they may need to create drawings to show the sequence in which the part should be machined and interim machining dimensions to reach the final part that's on the approved drawing.

Q. Right, sir. I'm not asking you whether or not suppliers such as TAE needs to make its own original design drawings. My question for you, and I think we established it just a moment ago is, you agree that TAE would need to create additional drawings in order to manufacture the parts, at least the ones that are not simple, true?

A. Yes.

Q. Okay. And that's the way it works in the industry, right, is the supplier creates its own -- does its own engineering work and its engineers may create its own drawings, including 3D drawings, true?

A. It's not necessary to make 3D drawings.

Q. But a lot of them do, a lot of suppliers do, don't they?

A. Some do.

Q. And you agree that a supplier such as TAE would have its own manufacturing techniques and as a result, would create these manufacturing drawings that they very well might consider proprietary, don't you, sir? That's true, isn't it?

A. Yes. The part that they do and that they add would be proprietary, not the rest of the data that was furnished to them by the PMA holder.

Q. I understand. And so we understand what you mean by proprietary in that context, sir, to you, that means not readily ascertainable, correct?

A. The machining part of it, no. The drawings would not be readily ascertainable.

Q. And that's what you mean by proprietary in that context, right?

A. Yes.

Q. Now, let's shift gears and talk about the other topic on which you were designated to testify as the corporate representative of Superior Air Parts. Okay? And that's the availability of the information that is found on the Superior drawings that were furnished to TAE. Okay?

A. Correct.

Q. Now, you were the retained expert witness in another case styled Rolls Royce versus H-E-R-O-S, correct?

A. That's correct.
Q. And that was a case pending here in the Northern District of Texas in Judge Fitzwater's court, correct?
A. Correct.
Q. And you were retained on behalf of a company that was being sued by Rolls Royce for, among other things, misappropriation of trade secrets, right?
A. Correct.
Q. So you were working for the company defending the trade secrets claim?
A. Correct.
Q. And to set the stage here, Mr. Dedmon, your testimony in the Rolls Royce case related to PMA applications, correct, at least in part?
A. In part.
Q. Okay. And those PMA applications that you've testified about that you were familiar with related to the Continental and Lycoming parts that Superior holds PMAs for, correct?
A. I'm not sure I understand and agree with what you said. The HEROS' case dealt only with turbine parts. And it dealt only with parts that were clearly in the public domain. And to the extent that I mentioned Continental and the Lycoming parts in that deposition, it was referring to parts which Superior or I had dealt with in the '60s and early '70s

and had nothing to do with the parts that are in the current case or anything similar.

Q. Sir, your testimony in the Rolls Royce litigation about the PMA applications that you were familiar with and had made for Continental and Lycoming parts related to Superior Air Parts PMAs, correct?

A. Yes. The ones that they had obtained by (indecipherable word) in the '60s and '70s.

Q. Sir, your testimony in the Rolls Royce case about the PMA applications that you were familiar with and had made for Continental and Lycoming parts related to Superior Air Parts, correct?

A. Correct.

Q. And those are the same parts that are involved in this dispute, aren't they, sir?

A. No.

Q. Do you remember when I asked you this question in your deposition, sir?

A. Yes. Mr. Simon, I do. And I do remember you bringing -- it wasn't actually a copy of my deposition, it was a copy of a West Law document that had some errors in it. And I think it's important right now to make clear to the Court and everyone that the HEROS case was six years ago. It was a case that involved strictly identicality. It was a part that involved, a case that involved Rolls Royce claiming

that their data was not in, or acquired by HEROS from the public domain. The Superior case now is entirely different. PMA being the only tie. And like I say, if I had known we were going to spend a lot of time with a six year old case that had nothing to do, maybe in 2008 I would have inserted more clarifying information, although their attorneys had no problem understanding what I was talking about.

MR. SIMON: Your Honor, I would ask that the last extended portion of that answer be stricken as non-responsive.

THE COURT: Sustained.

Q. Mr. Dedmon, my question was, do you recall when I asked you whether or not the parts that you had testified about, the Continental and Lycoming parts that you testified about in the Rolls Royce case, were a subset of the parts that are involved in this dispute?

A. Yes, I do.

Q. Do you recall when I asked you that in your deposition?

A. Yes.

Q. And your answer during your deposition was, yes, wasn't it, sir?

A. Right.

Q. Now, you're right, sir, when we took your deposition, I had obtained a copy of your expert report and

an excerpt of your testimony in the Rolls Royce litigation off of West Law. We have since located, I think, a slightly better copy of your report off of the Court system called Pacer. So if we could -- if you could flip in your notebook, sir, it will be the second notebook of IA exhibits.

MR. SIMON: Your Honor, should I assist the witness?

THE COURT: Please. You may.

Q. Let me see if I can help you find it, Mr. Dedmon. It's in this notebook.

MR. SIMON: For the record, I have pointed the witness in the Insolvency Administrator's Hearing Exhibit Binder to Exhibit IA-20. And, Your Honor, there have been a few exhibits added by both sides since July 22nd. And I believe copies were provided to the Court for our's with tabs this morning.

THE COURT: I don't have them. So --

MR. SIMON: We did provide two sets. I don't know where they went.

THE COURT: Okay. I'm told I do have them.

MR. SIMON: I think the label on the notebooks still would not be current.

THE COURT: Got it. And, I'm sorry, it was 21?

MR. SIMON: This is 20, Your Honor, IA-20.

THE COURT: I'm there. Thank you.

Q. All right. Mr. Dedmon, we looked at this report during your deposition, as well, but in a different form, correct?

A. Correct.

Q. And looking at this report, can you identify this as a copy of your expert report that was submitted in the Rolls Royce versus HEROS litigation?

A. Yes, that's correct.

Q. And if you flip back to page 14 of Exhibit 20, that's your signature there on that page, correct?

A. Yes.

MR. SIMON: Your Honor, we would offer Exhibit 20, IA-20.

MR. ALEXANDER: Your Honor, objection. We don't have any objection to him questioning him about it as an impeachment document or document, but this is an expert report from another case. And as all expert reports, it's hearsay. That would be our objection. Just like I can't get in my expert's report from this case, because it's hearsay.

THE COURT: Response?

MR. SIMON: It's a party admission, sir. It's a document created by this party's own witness. By definition, not hearsay. It's an admission of a party opponent.

MR. ALEXANDER: Mr. Dedmon is not a party.

THE COURT: Sustain the objection. You can question the witness about it, but the expert report is not admissible.

MR. SIMON: Okay, Your Honor. I'll do it that way.

Q. Let's look at page 13, sir, of the expert report you submitted in the HEROS case.

Is it HEROS or H-E-R-O-S, how do you say it?

A. It's actually, I believe, H.E.R.O.S. We refer to it as the HEROS case.

Q. Okay. Then I will too. That will be easier.

All right. If you would look at the summary or the opinions that you offered in that case, sir, on page 13. There are eight of them, correct?

A. That's correct.

Q. All right. I want to focus your attention just on a couple of them. And let's start with opinion number 4.

All right, sir. Just tell me if I read this correctly and if this was your opinion, quote, The information for developing design data for PMA application is available in the public domain. Sources for this information include, but are not limited to, data for products developed at US Government expense; data developed by actual manufacturing sources that have assisted LEMs in developing products; data

published in maintenance manuals and service documents.

Did I read that right?

A. That's correct.

Q. And that was your opinion, correct, sir?

A. Yes. However, may I add to that?

Q. Well, if I might move to opinion number 8, sir. Is that all right you?

A. Okay.

Q. Okay. Opinion number 8, sir, and tell me if I'm read this one correctly. Documents and data that can be utilized to develop design data are readily available through the Freedom of Information Act or directly from military procurement offices indicating that the US Government represents that this information is in the public domain.

That was also your opinion in the HEROS case, correct, sir?

A. That's correct.

Q. All right. And then you were asked -- I'm going to move my binder, sir. I'm not sure if you'll want to refer to your report again or not. But you were asked in the Rolls Royce case about those opinions, right, in a deposition that you gave in that case, correct?

A. Correct.

Q. And, specifically, you were asked what documents and data you were referring to, right? That was one of the

things you were asked about, right?

A. Yes. Yes.

Q. One of the things you were asked --

MR. SIMON: And, Mr. Lodge, if we could pull up page 75 of the deposition transcript from Mr. Dedmon's testimony. I think it would just be easier if we see this on the screen.

Q. Okay. Up at the top of the page, the question you were asked is, I guess what I'm trying to get at, what documents you're referring to there, because it's a pretty broad statement. And if it's not all documents and all data, which documents and which data? And your answer, sir, was, quote, Well, I've received drawings for parts any number of parts, specifications for those parts. Question, Which parts? Answer, Parts for Continental and Lycoming aircraft engines.

That was your testimony under oath in the HEROS/Rolls Royce litigation, correct?

A. That's correct.

Q. And that related to your opinion number 8 that we just talked about, correct?

A. Correct.

MR. SIMON: Okay. Now, let's go, Mr. Lodge, if we can to some questions about opinion number 4. And if we could look at page 39 of the transcript.

Q. And that testimony was under oath, wasn't it, sir, the testimony you gave in a deposition in the Rolls Royce/HEROS case?

A. Yes.

Q. And it was truthful, wasn't it, sir? Your testimony was truthful?

A. In the HEROS case?

Q. Yes.

A. Yes.

Q. So the question at the bottom of the page, sir, beginning on line 22 is, Moving to opinion number 4, you state that the information for developing design data for PMA application is available in the public domain. If we go to the next page the question is, What information are you referring to here? Your answer was, I'm referring to information that he, and I assume that that's a typo and it should be we, used to develop design data. My personal experience is with piston engines, but I am aware that the data is available in the public domain. Question, How are you aware? Answer, Because I've been in the PMA business for 40 years and that's the way that you obtain design data, you develop design data.

Have I read that correctly so far, sir?

A. So far, yes.

Q. The next question was, This is a pretty broad

statement. Are you saying that all information related to all data and parts is in the public domain? Your answer was?

A. No.

Q. The next question was, Then what specific parts, what specific data are you referring to there? And your answer was, quote, Information that is necessary to develop parts. It's not every bit of the information is available in the public domain, but certainly sufficient information is available in the public domain to prepare and submit design data to the FAA.

Did I read that correctly?

A. That's correct. For a generalcality.

Q. I read that correctly, didn't I, sir?

A. You did.

Q. All right. If we skip just a couple of lines, I think, the next question is --

MR. SIMON: It begins, Tracy, you're not aware of any data related to parts that's not in the public domain. Here we go.

Q. You were asked, you're not aware of any data related to parts that's not in the public domain? And your answer was, quote, No. I may explain that every bit of information that I have sought out to obtain PMAs has been available in the public domain.

That was your answer, wasn't it, sir?

A. That's correct.

Q. And then the next question, How many parts -- well, we don't need to skip line 14. We can go to line 14.

And what are those parts that you've -- that you have, you sought to obtain PMA approval? Answer, Parts for Continental and Lycoming aircraft engines. All of the parts, actually. Next question, How many parts have -- have you tried to obtain PMA approval for with respect to the Continental and Lycoming aircraft engines? The answer was, Several thousand. Question, And that related to piston engines? Your answer was, Yes.

Did I read that correctly?

A. Yes.

Q. And then the next question, And every single one of those several thousand parts, the information was in the public domain? And your answer, sir, was?

A. Yes.

Q. And that testimony was under oath and truthful, correct, sir?

A. Correct.

MR. SIMON: I'll pass the witness, Your Honor.

THE COURT: Cross-examination?

MR. ALEXANDER: Yes, ma'am.

(no omission)

CROSS-EXAMINATION

BY MR. ALEXANDER:

Q. Mr. Dedmon, when you testify, will you please look at Judge Houser and speak to her.

Mr. Dedmon, what are you doing tomorrow?

A. I'm having back surgery.

Q. And did you reschedule that surgery so you could come here and testify?

A. I did.

Q. And was that because you wanted the Court to be sure and understand the things you know about the issues in this case?

A. That's correct.

Q. Are Superior's data and drawings available in the public domain?

A. No.

Q. Were they available in the public domain when Superior started doing business with TAE?

A. No.

Q. Are Lycoming's drawings and data available in the public domain?

A. No.

Q. Were they available in the public domain when Superior started doing business with TAE?

A. No.

Q. Is Teledyme Continental Motors information available in the public domain?

A. No.

Q. Was it available in the public domain when Superior started doing business with TAE?

A. No.

Q. Mr. Simon talked to you about some testimony you gave in a deposition in the HEROS case. You remember that, right, it just happened?

A. Yes.

Q. Did that case deal with the parts that Superior made, the HEROS case?

A. No.

Q. Did that part -- did that case even deal with piston engine parts?

A. No.

Q. When you made the statement in the deposition Mr. Simon read to you where you said you'd obtain Lycoming and Continental PMAs based on information in the public domain, what time frame did that occur in?

A. For Superior Air Parts, it was in the '60s and very early '70s.

Q. And did you -- did you testify -- your testimony in the HEROS case, when you were giving that testimony, was that in that time frame? Is that your understanding of the

questions that were being asked to you?

A. Yes.

Q. Did you testify in that deposition that the kinds of PMAs you were talking about getting based on information in the public domain were PMAs by identicality?

A. Yes.

Q. Would you please read -- I want you to read some testimony that you gave in that same thing. And I'm going to use Exhibit IA-14.

So you need to get IA-14. It's their Exhibit Number 14. These books have a lot of exhibits in them, don't they?

Okay. I'm going to refer you to these page numbers down at the bottom.

A. Okay.

Q. I want you to turn in that to page 19. And do you see a question down at the bottom quarter of the page the question says, And it is your opinion that regardless of how many parts there are in an engine, the fact that there may be one or two or three dozen parts that have PMA approval means that every single part has data that is in the public domain?

A. I see that.

Q. Do you see that question? This was in the HEROS case.

What was your answer?

A. If I said that, I mis-spoke. In fact, it shows

that if parts are being submitted for approval based on identicality, that the information that is used to prepare those is in the public domain. There may be others that are not. I can't speak to every single part in the engine.

Q. And what you were talking about in all of the parts of the deposition that Mr. Simon read to you was PMAs that were obtained by the identicality method under the federal aviation regulations?

A. Yes.

Q. When was the last time Superior Air Parts got a PMA by identicality?

A. To the best of my knowledge, it was prior to 1981.

Q. About 35 years ago?

A. Yes.

Q. Were the PMAs for the parts that Superior sent drawings to TAE for obtained on the basis of identicality?

A. No.

Q. So does your testimony about what used to be available in the public domain have any application to any parts, drawings that Superior sent to TAE?

A. No.

Q. What kind of drawings was it that Superior sent to TAE?

A. They were design drawings.

Q. Now, what does that mean? What's a design drawing?

A. Well, a design drawing is a full and complete description of the part that shows what the finished part is to look like, describes all dimensions and tolerances, describes material processing, everything that is needed to describe the part to obtain approval from the FAA.

Q. And a manufacturer, or some of our supplier who makes parts could make a part from that drawing?

A. Yes.

Q. Were the designs 100 percent completed on these drawings before they were ever sent to TAE?

A. Yes.

Q. Did TAE participate in any way in the engineering of the design of the Superior parts?

A. No.

Q. As a matter of fact, before you submit something to the FAA for design approval, it has to be a completed drawing so the FAA can tell it will produce the part depicted by the drawing?

A. Right. When you submit that drawing to the FAA, one, they're going to find whether or not the part described on the drawing meets the air worthiness requirements. And then the second step would be for the FAA to determine if a company has the quality control system to make sure that the parts received to that drawing can be inspected to ascertain every dimension is correct.

Q. Mr. Simon asked you a question about your opinion number 4 in your report. And you started to say something and I don't believe you got to finish it.

Do you remember what you wanted to say?

A. Can you --

Q. Opinion 4 was the information for developing design data for PMA application is available in the public domain. Sources for this public information includes, but are not limited to, data for products developed at US Government expense, data developed by actual manufacturing, OEMs. Do you remember, you wanted to say something. Do you remember what it was?

A. Well, yes. The opinion number 4 had to do specifically with Rolls Royce and HEROS. And it had to do with parts that were being obtained, or had been obtained by identicality. And certainly didn't have anything at all to do with parts that were approved by test and computation, or any other method.

Q. When the manufacturer -- when TAE got these FAA approved design drawings from Superior, was there any reason for TAE to make 3D models?

A. Only if -- if that was something particular to their way of manufacturing a part. I would say that the vast majority of manufacturers did not make -- well, it wasn't necessary to make a 3D drawing at all, unless that was

specific to the way they manufactured parts.

Q. But manufacturers make parts to those same drawings that you sent to TAE without 3D models?

A. Yes.

Q. And they do it without making manufacturing drawings too, don't they?

A. As far as I know, yes.

MR. ALEXANDER: I believe that's all we have, Your Honor.

MR. SIMON: Very brief, Your Honor?

THE COURT: Of course.

REDIRECT EXAMINATION

BY MR. SIMON:

Q. Mr. Dedmon, when you were offering your testimony in the Rolls Royce versus HEROS case, your testimony was clear that you were referring to the PMAs you had obtained for Continental and Lycoming parts in the several thousand parts range, correct?

A. Yes. I believe I used that number, yes.

Q. Have you obtained several thousand PMAs based on identicality?

A. Oh, no.

MR. SIMON: That's all I have, Your Honor. Thank you.

THE COURT: Anything further?

RECROSS-EXAMINATION

BY MR. ALEXANDER:

Q. Again, when you were speaking of things that were in the public domain, that was in the '60s and '70s and had nothing to do with the parts that TAE manufactured for Superior?

A. That's correct.

Q. Thank you, Mr. Dedmon.

THE COURT: Anything else?

MR. SIMON: No, Your Honor.

THE COURT: Mr. Dedmon, thank you very much. You may step down. And, also, thank you for rescheduling your back surgery. I hope it goes well.

MR. ALEXANDER: Your Honor, if Mr. Dedmon wants to be excused, may he be excused?

THE COURT: Any objection?

MR. SIMON: No, Your Honor.

THE COURT: He's free to be excused when he wishes.

MR. ALEXANDER: He may want to stay and listen to some of this.

MR. SIMON: May I proceed, Your Honor?

THE COURT: You may.

MR. SIMON: Your Honor, before I call our next witness, Professor Rienacker, Insolvency Administrator's

expert witness, we -- Professor Rienacker has prepared a series of slides to assist in connection with his testimony. They are -- I have hard copies I can provide to opposing counsel and the Court, if I may.

May I approach?

THE COURT: And law clerk, please, too.

MR. SIMON: Yes.

THE COURT: Thank you.

MR. SIMON: All right. Your Honor, with that, the Insolvency Administrator calls Dr. Adrian Rienacker.

THE COURT: Mr. Rienacker, if you'd come to the witness chair and raise your right hand and we'll swear you in.

(The witness was sworn by the courtroom deputy.)

MR. ALEXANDER: Your Honor, may I have one moment to get my expert, Mr. Chapman, up here?

THE COURT: Of course.

MR. ALEXANDER: Thank you, Your Honor.

THE COURT: Of course.

MR. ALEXANDER: And if I can, I'll get these books out of the way, if you want me to.

THE COURT: Will he need the --

MR. SIMON: Maybe. He may need volume 2.

MR. ALEXANDER: It's getting crowded up there.

THE COURT: Please be seated.

MR. SIMON: May I proceed, Your Honor?

THE COURT: You may. Please.

ADRIAN RIENACKER

The witness, having been duly sworn to tell the truth, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. SIMON:

Q. Professor Rienacker, would you please introduce yourself to the Court.

A. My name is Dr. Adrian Rienacker.

Q. And Professor Rienacker, what do you do for a living?

A. I am a professor in mechanical engineering at the University in Kassel, Germany. I hold a chair for machine elements and tribology, again at the University in Kassel. And I'm managing director of the Institute for Powertrain & Vehicular Engineering, also in Kassel.

Q. And would you please describe for the Court your educational background?

A. I hold a diploma in mechanical engineering from the Technical University in Aachen, also Germany. That was in 1990. And I also hold a PhD degree with distinction, again from the Technical University in Aachen, Germany.

Q. And when did you obtain your PhD degree, sir?

A. That was in 1995.

Q. You've had a -- you've held your doctorate for almost 20 years?

A. Yes, sir.

Q. Can you tell the Court about your experience in working with aircraft engines and working in the industry, please?

A. Yes. I joined BMW/Rolls Royce in the year 1996. BMW/Rolls Royce is an aircraft engine manufacturer. And I worked especially on the specifications aspects of the BR715 engine. And that, I worked on all of the case (indecipherable word) certification, the relative dynamics aspects, and also the accessory of operation certification aspects. I joined MTU Aero Engines in the year 2001 working in case structure mechanics. Became leader of that department, a discipline department. And I was leader of that department for about five years. I think joined the project department for the same company, GP7000 engine. We worked on the entry into service of the GP7000 engine with Emirates. And I accompanied all the cost reduction activities for the GP7000 low pressure turbine, which meant that I had to deal with configuration control certification aspects of that engine. And both of my assignments at MTU, I was appointed to be a component verification engineer, which means that I authorized certification plans and certification activities for parts, assemblies, and modules and, also,

repair certifications which covered also parts that were not originally manufactured by MTU or Pratt & Whitney. And in that I touched the PMA business side of that industry.

Q. Professor Rienacker, English is not your first language, is it?

A. It is.

Q. It is your first --

A. Sorry for that. I --

Q. It is your first language?

A. No, it is not. Sorry.

Q. I was going to say, I didn't think it was. But your English is very good. Have you spent some time working in the United States in the past?

A. Yes. I was delegated to work with Pratt & Whitney onsite in East Hartford between October of 2005 and April 2006. And there I was a deputy component integrated team leader that worked on the high-pressure compressor of the (indecipherable word) engine that will be powering the A320 NEO Aircraft. NEO stands for New Engine Option. And that is going to be in service soon.

Q. What aircraft is that for, the A320?

A. That's the A320. That's a single aisle, 130 seater to 180 seater.

Q. Does your experience, Professor Rienacker, provide you with what you believe is a complete view of the

engineering and business aspects of the aircraft engine industry?

A. Yes. I would say it's rather complete. As a discipline department leader, I had full insight in all of the engineering aspects of that work. Being a project department leader, I was interfacing with the business side. I was interfacing with procurement, manufacturing, and also the program side, which dealt with the customers.

Q. And in addition to your aviation industry, in particular, do you also have experience and expertise related specifically to piston engines?

A. Yes, I do. All of my work as a PhD student between 1990 and 1995 covered piston engines. I was specifically working on fluid film lubrication on connecting rock bearings and also on temperature distributions and pistons. So that covers two very different physical aspects of piston engines and also two very important parts of those.

Q. And how about in your current position, sir, as a professor of engineering, do you still deal with piston engines?

A. Oh, yeah. That's most of my work. I'm dealing with the car manufacturing industry in Germany and also the truck manufacturing industry. About 80 percent of my research budget is related to that industry and that supply chain. And in the first seven months of this year, I was

awarded a research contract worth probably $1 million. And 80 percent of again of that is related to piston engines.

Q. All right. And can you describe for the Court what you do day to day as a professor of engineering?

A. Yes. I -- I teach -- well, I supervise most of the CAD and design education in the first four semesters for mechanical engineers. And I teach machine elements, also finite element methods, and tribology.

Q. Some of that I don't even understand.

A. Tribology is the science of friction, lubrication, and wear.

Q. Thank you for that.

Professor Rienacker, do you consider yourself to be an expert in mechanical engineering, including the ability to explain detailed design and manufacturing drawings and related data for aircraft engine parts?

A. Yes, I do.

Q. And do you consider yourself to be an expert in the engineering aspects of aircraft engines, including piston engines, including the processes by which parts are designed in related engineering and manufacturing work?

A. Yes, I do.

Q. And do you consider yourself to be an expert on the industry norms for dealings between manufacturers and suppliers in the aviation industry?

A. Yes, I do.

MR. SIMON: And, Your Honor, with that, we would tender Professor Rienacker as an expert in those areas.

THE COURT: Any objection?

MR. ALEXANDER: Your Honor, I don't have -- this objection could also be a statement. He's come a long way and I've taken his deposition and I want him to testify today. I know the Court wants to hear this, you're also interested in what he will say. But I believe that he does not have nearly the experience in piston aircraft engines. His experience is in -- all the experience that he has told you about in the aviation industry is in jets, which is completely different. And all of his engineering expertise with piston engines is with cars and trucks. And aviation engines are different and we will have somebody talk about that in rebuttal.

THE COURT: All right. The Court will accept him as an expert.

MR. SIMON: Thank you, Your Honor.

Q. Let me just -- let me just ask a couple of quick questions, Professor, to follow up on the statement you just heard counsel make.

A. Yes.

Q. Are there similarities, in your view, between the piston engines in the automotive industry and the aviation

industry?

A. There are similarities between the parts in the automotive industry and the parts in the aircraft engine industry. Obviously it's the same working principle.

Q. Okay. And I think that's really all I need to do that, Professor.

THE COURT: All right.

Q. Let's move forward, Professor Rienacker. Have you, in fact, prepared some slides with the assistance of our graphics consultant?

A. Yes. And, again, I was supported in that.

Q. Yes. Okay. Let's go to the first slide, if we can. And is this a summary of the opinions that you intend to testify about here today, sir?

A. Yes, it is.

Q. Would you go through these briefly for the Court?

A. The 3D volume models were created by TAE as an essential pre-requisite for deriving other important documents from them. Creating 3D volume models was a significant engineering effort which required TAE's designs know how and manufacturing know how. The detailed manufacturing drawings and other manufacturing related documents that TAE created involved considerable engineering know how and effort and contained sensitive manufacturing related information. The work done by TAE engineers created

commercially valuable proprietary manufacturing documents that would not typically be shared between a supplier and a customer. And all necessary information in the SAP drawings provided to TAE is either publicly available or readily ascertainable.

Q. And, in fact, are those your opinions, sir? That's a fair summary of your opinion?

A. Yes, it is.

Q. All right. Let's back up and talk about how you got to those opinions, sir.

When were you first retained to work in connection with this dispute?

A. It was approximately June 18, this year.

Q. Okay. And can you explain to the Court what you were asked to do, please?

A. Well, I was asked to form an unbiased opinion concerning the nature of the work behind creating 3D volume models. And also related manufacturing drawings and information. And I was also asked to form an unbiased opinion on whether that sort of information was proprietary to a supplier or shared between a supplier and an OEM or GMA holder like SAP.

Q. At the time that you were contacted and asked those questions, Professor, had you had any prior dealings with either Superior Air Parts, Thielert, or Dr. Kubler?

A. No, I have not.
Q. Approximately how many hours have you personally spent on your work in connection with this matter?
A. I have spent now more than 180 hours on the case. Most of that before July 22nd, this year.
Q. And have you had others, who were assisting you in connection with your work?
A. Yes. I had two of my best designers working with me under my supervision. And they probably have also spent more than 180 hours on the case. In addition, I have both of my deputies, both holding a PhD in mechanical engineering work with me. And they spent probably another 10 hours on the case. And I was in contact with Mr. Deitel, a former TAE employee, a designer, a degreed designer who knows much of the background in the years that we talk about.
Q. Mr. Deitel, when you say he was a designer, was -- is Mr. Deitel a degreed engineer?
A. He is a degreed mechanical engineer.
Q. And he was a TAE employee during the time the documents we're going to be talking about today were created?
A. Yes. He was a TAE employee and he worked on the parts that we talk about right now. And most of the drawings that we found on the drives that we explain later on bear his signature.
Q. Okay. Was his -- was Mr. Deitel's assistance

valuable to you, sir?

A. It was very valuable, because I did not -- I did not have the background at the time. You know, I was entered the case in June of this year.

Q. So he was able to help you, for example, locate materials on the USB drive?

A. Yes. That was very helpful.

Q. All right. Let's talk about the work that you did, sir, to arrive at the opinions. And if you could, please, describe for the Court the information that you reviewed and the work that you performed.

A. Yes. First of all, I reviewed some of the data that was found on the USB drive, which is in dispute here. USB drive, that needs to be understood, contains 40 gigabyte of data located in approximately 11,000 folders and sub-folders, and probably includes more than 80,000 individual files on the drive.

Q. That's the drive that you heard some testimony about back here on July 22nd?

A. That's exactly right, yes.

Q. Okay. And so did you review every single document on that USB drive?

A. No. Obviously reviewing 80,000 files is not possible, especially not in the time given. And, also, I was not necessary to do that.

Q. All right. So what did you do, sir? How did you focus your efforts?

A. Well, we reviewed spreadsheets on which data is described that SAP continued to be their proprietary information. And with that spreadsheet, we were able to locate individual files and take a look at them. In addition, I reviewed engine overhaul manuals that are publicly available on the internet. And we also reviewed regulations from the FAA, the Federal Aviation Authority. In addition, we reviewed information with respect to work being done the XP400, the development and experimental engine.

Q. Okay. You heard Mr. Marwill testify on July 22nd that he had looked at all of the drawings on the USB drive, right?

A. I did.

Q. And you also heard his testimony that at the time of his deposition, he believed he had spent somewhere in the 20 to 30 hour range on the dispute?

A. Yes, I did.

Q. Do you think it's even remotely possible to review all of those drawings and anything approaching 20 to 30 hours?

A. No, I don't think so.

Q. Professor Rienacker, did you also subject your opinions that you reached in this dispute to some sort of

peer review?

A. Yes. Just to make sure that I was not missing anything and to challenge my opinions. I spoke to individuals familiar with the field of aircraft engines, without going into further detail. But I made sure that, you know, the essential opinions that I came up with were challenged. And I found broad agreement with my statements and opinions.

MR. SIMON: All right. Let's go to slide regarding Professor Rienacker's opinion number 3.

Q. And, Professor, is this a slide that pulls out your third opinion that was set forth in your summary of opinions that was produced to Superior?

A. Yes, it is.

Q. Would you go through the third opinion for the Court, please?

A. Yes, I can.

All 3D volume models were created by TAE as an essential pre-requisite for deriving other important documents from them. Creating 3D volume models was a significant engineering effort which required TAE's design know how and manufacturing know how. And is by industry practice proprietary to TAE and not shared between a manufacturer, supplier, and its customer.

Q. And on the slides that follow, are these materials

that you have created to illustrate the level of engineering effort that was required for TAE to create these 3D volume models?

A. Well, I pulled that information together. Some of that was obviously available and we found that on the drive, for instance.

Q. On the USB drive we were just referring to?

A. Yes. Yeah.

Q. Okay. All right.

MR. SIMON: So let's go to the next slide, if we can. And for the record, Your Honor, this is a document that was marked at IA-16.18.

Q. And, Professor Rienacker, if you could identify this document for us and tell the Court what it is.

A. Yes. It's IA-16.18. That's on the bottom right corner. And that is a typical representation of a (indecipherable word) assembly. One of the parts that TAE manufactured in various different designs for SAP. And this is the typical 2D assembly drawing that was provided from SAP to TAE for a quote on the part, certainly, and then for manufacturing the part.

Q. Okay. So we're clear, there's been a lot of testimony in this dispute so far about the Superior 2-dimensional drawings that were provided to TAE. This is an example of one of those?

A. One good example.

MR. SIMON: Your Honor, we would offer Exhibit 16.18, IA-16.18.

THE COURT: Any objection?

MR. ALEXANDER: No objection, Your Honor.

THE COURT: It's admitted.

Q. Professor Rienacker, did you find a 3D volume model on the USB drive related to this very part?

A. Yes. We did find the relevant 3D volume model.

Q. And if we go to the next slide.

A. And we --

Q. Okay.

A. This is a representation of the 3D volume model. Out of the CAD model, we pulled this, what is called a 3D PDF model to be able to present that here in the courtroom. And what I would like to highlight is that in this 3D PDF model, like in the CAD model, you can turn the part and look at the part from every conceivable side. And that's quite similar to what it was if you turned the part -- if you held the part in your hands and turned it around in order to obtain geometric information from the part.

In addition to that, you know, turning around of the part, you can define cutting planes to the part, so you can look into the inside and get familiar with the internal geometry that the part provides. I would like to especially

highlight here in this case, if you could show the Xs, please. I would like to make sure that we take a look at what we are calling the inflow and outflow channels of that cylinder head.

Q. Do you need to approach the screen, Professor Rienacker?

THE WITNESS: May I step up, please, Your Honor?

THE COURT: Of course, you may. The only concern will be getting you on the record. So speak loudly when you're at the --

A. As we move through the part, I would like to highlight you to that sort of channel. This is a geometry that is quite hard to understand (inaudible few words). And, in fact, we have -- were told that this was not obtainable through the 2D from SAP. So as we walk ourselves through that channel, we can see that this complicated geometry is something that needs to be addressed when you try to establish a 3D volume model like this one here from the 2D volume that we have seen before. That's all I would like to show here.

THE COURT: Very well. Thank you.

Q. Thank you for that, Professor Rienacker.

Can you explain -- well, first of all, are these 3D volume models important?

A. Yes, they are. They're important to --
Q. Can you explain? Can you explain why?
A. Creating the 3D volume models is the first step to create manufacturing information from them. Manufacturing is something that always happens in the 3-dimensional space. You cut the part from all sides. So this is the proper representation that you need to easily and risk mitigatingly derive manufacturing information from that. And, also, that's the most cost effective way that we have today to do that.
Q. All right. Let's talk now about how we got from point A to point B and how TAE specifically created that 3D volume model that we were looking at.
Did you make an inquiry, sir, into that very process?
A. Well, yes. This is depiction in pictures taken from the screen --
Q. And let me just interrupt you, sir, for the record, so I can identify what we're looking at.
These are drawings or diagrams that were taken from IA-16.9, pages 42 and 43, by the way.
A. So this essentially shows how a 3D volume model is created in the CAD software. On the upper left corner, you see more or less that typically you're starting from scratch. Nothing is depicted on the screen. Then on the picture to the right, you see that you start with simple geometry. Like

here, a part of the geometry of the combustion chamber. And then you'll start getting pieces layer by layer to the geometry. And each time when you do that, you have to blend the existing geometry to the new geometry that you had. And in that process, you always have to make conscious decisions as a designer as to how to blend the parts. Sometimes the information can be conceived from the 2D drawings supplied, like by SAP. And other times you have to make the conscious decision on how to proceed. And obviously there are many ways to come up with the 3D volume model from the 2D drawing. Some of these ways are very helpful in later steps of the process like deriving manufacturing information. Others are not so good. And in that respect, the know how of the designer who's doing that sort of work will impact the amount of work that needs to be input later on. You see --

Q. Let me just -- before we go farther, and I know you have more slides on this, Professor.

A. Yeah.

Q. Let's explain to the Court what this document is, Exhibit 16.9.

Where did this information that we're looking at on the screen come from?

A. This is a report prepared by a TAE engineer who was -- who showed simply how he created the model.

Q. Okay. All right. Let's -- would you like to go to

the next slide?

A. Yes, please.

Now, as you proceed in adding more features to the part, it may be necessary to hide a portion of that model. Like here, the cooling rips that are shown the cylinder head are hidden at some point in time to include further features on the part. And then, again, layer by layer, parts are added and blended into the model.

Next slide then finally shows the final representation of the model. As we have seen in the 3D PDF, you can turn the part in the software. And, for instance, in the upper right corner, you can see the inlet and exhaust valves. The volumes there are for the flow channels that we'll talk about later on.

Q. All right.

MR. SIMON: At this point, Your Honor, I would offer Exhibit 16.9, IA-16.9.

MR. ALEXANDER: Objection, Your Honor, that's hearsay. This is something that was created by somebody in Germany. I mean, it can be part of his expert report that he relies on it and he can talk about it, but there's been nobody to prove it up, what it is.

MR. SIMON: Now, Your Honor, I don't have a witness to prove this up as a business record. I would suggest that the fact that it came off of TAE's USB drive

that was produced in this litigation, it contained the files related to this business with Superior, establishes that it is a business record. I could provide the Court with an affidavit to that effect at a later date, if you wish. I do not have a witness to prove that up.

THE COURT: Then I'll sustain the objection.

MR. ALEXANDER: Thank you, Your Honor.

Q. All right. Professor Rienacker, let's refer to the next slide, please. And can you explain to us what we're looking at here in Exhibit 16.9, page 23?

A. Yeah. This is in hardware, a photograph of the hardware that we just have seen in this 3D representation of the CAD model. And this shows the inflow of the exhaust channel of the engine, which is important because it's controlling the amount of air that can be flown into the combustion chamber and the amount of air that can be pushed out of the combustion chambers. So it's an important feature overall for this piston engine.

Q. And if we look at the next slide, Professor Rienacker, what is depicted on this slide?

A. Well, this is, again, part of that report. And it shows -- well, first of all, I've been told that the internal geometry of the flow channels was not able -- was not possible to be extracted from the 2D drawing that was supplied by SAP. And, therefore, TAE undertook a major

amount of work in order to get to that geometry that could not be supplied by SAP or would not be supplied by SAP. And what TAE did here was they figured out a way how to get to that geometry. And that way involved using medical silicone in order to get a negative form of that geometry. The yellow parts that you saw on the previous slide, those are cores made of clay such that it would be possible to remove that medical silicone from that geometry, metal geometry of the part.

If we proceed, then obviously -- I'm sorry, one back, please. You see the pink medical silicone, which could after the course have been removed, be extracted from the inflow and exhaust channels. And then you see that the medical silicone forms the internal geometry of that -- of those flow channels. Unfortunately, the silicone is very flexible, so you cannot take measurements from the silicone itself. So an additional step needed to be incorporated, there was a mold being formed from hard clay as to get the internal geometry made in resin, which was poured into that mold. And that resin hardened up in time. And from the resin, which is hard, you can take coordinate measurements, which was the next step in the process. And what you see here is the model formed in resin, the hard model, and you can see here the outlay of points that were measured with the 3D coordinate measurement machine.

If we go to the next slide. On the upper left corner, you see a bunch of points. This is what comes out of the coordinate measurements. And it still doesn't form any surface geometry or volume geometry to obtain that. You needed further processing steps from a skilled engineering fitting surfaces through the points and then at the final stage creating a volume that would represent the void volume of the inflow channel. And this is actually what was done here.

Q. Professor Rienacker, back a few slides ago we looked at a series of blue screen shots from various stages of the creation of the 3-dimensional volume model, remember that?

A. Yes.

Q. Is that a process that TAE engineers would have been required to go through to create each of the 3D volume models that it created for Superior parts?

A. Yes. In a similar fashion, yes.

Q. How much effort do you believe was required to create just this one 3D volume model that we were looking at?

A. Weeks of hard work, including design know how and also laboratory know how.

Q. And was all of the information necessary to create that 3D volume model found on the Superior 2-dimensional drawing that we looked at a moment ago?

A. Yeah. For this part, it was necessary.
Q. I'm sorry, sir. Was all of the information on the 2D drawing or not?
A. Pardon. Pardon. The information was not available through the 2D SAP drawing.
Q. Professor Rienacker, did you consider Exhibit -- Insolvency Administrator Exhibit 16.9 in forming your expert opinions in this case?
A. Yes, I did.
Q. And where did you find that document?
A. On the USB drive.
MR. SIMON: Your Honor, we would try again at this, to offer this exhibit, not for the truth of the matters contained in the exhibit, but as part of the foundation for the expert's opinion.
THE COURT: Any objection?
MR. ALEXANDER: I don't have any objection on that basis, Your Honor.
THE COURT: Very well. The Court will admit it on that basis.
Q. Now, Professor Rienacker, that looks like quite a bit of work to create this 3D volume model we just looked at, true? Fair?
A. Yes.
Q. Was that amount of work required for each and every

3D volume model that TAE created?

A. Likely not.

Q. Okay. Explain what you mean by that, or why that's the case.

A. Well, I mean this is a complicated geometry. And as we have seen right now, a lot of effort went into that. This is not typical for the creation of the 3D model. But still creating a 3D model involves hard work and skilled work. And you need to have some education to do that.

Q. Have you estimated the level of effort that was required by TAE engineers to create the various 3D volume models that it created for Superior parts?

A. Well, yes. I would say all of the 3D volume models took thousands of hours in creation.

Q. And I think we've covered this, but just so the record is clear on this, Professor, in your view, are the 3D volume models in any way a duplicate of the 2D Superior drawings, just in a different form?

A. They are in no way a duplicate. They show the same part, that is correct. But they are not identical and not a duplicate. It's creating 3D volume model is an independent engineering work.

Q. All right. Professor Rienacker, let's move on to your next opinion, opinion number 4. And would you review your opinion number 4 for the Court, please?

A. Yes, I would.

The detailed manufacturing drawings and other manufacturing related information TAE created after creating the 3D volume models also contains sensitive manufacturing related information. Again, this work done by TAE engineers created commercially valuable, proprietary manufacturing documents that enable a supplier to fabricate the parts in a cost effective manner and within the specification provided by the customer. Such material would not typically be shared between a supplier and a customer. And it would be considered an unfair business advantage to the customer, if the supplier were forced to provide this information to him.

Q. Thank you, Professor Rienacker. And I believe we have, what, three examples to show the Court with respect to this opinion?

A. Yes, we do.

Q. Okay. Let's take a look at the first one.

MR. SIMON: If we could go to the first slide, please.

Q. And for the record, this is Exhibit IA-16.19, correct?

A. That's correct.

Q. Okay. And tell the -- page 22 of that exhibit, would you please tell us what we are looking at here on this slide?

A. We are looking at a finished part line for what is called the cylinder barrel. This is the part where the piston is sliding up and down in. And this part is typical for the 2D drawing supplied to TAE by SAP. And, again, it bears the SAP logo on it.

Q. All right.

MR. SIMON: And can we go to the next slide, please, Paul?

Q. This is also from 16.19. Can you identify for the Court what this document is?

A. Well, this is a TAE drawing. It shows the same part number as the drawing before. And I would like to highlight a few items on this drawing, which appear to be relevant here in this case. First of all, the blue box that you see in the center of the drawing, make sure this is the part that was requested by SAP in that extra spreadsheet, directory 2SLX, line item 797.

Q. In other words, this is a drawing that Superior says belongs to it?

A. Exactly.

Q. Okay. And the first -- the second item I would like to highlight here is a 3D graphical representation of the part that we are looking at. That it is a 3D graphical representation indicates that this 2D drawing was derived from a 3D volume model. And, in fact, by common sense, it

proves that, because there was no easy way of obtaining such a 3D representation without having a 3D model to it.

THE COURT: May I ask a question? My page 17 doesn't show the blue box in the middle.

MR. SIMON: Let me see what I have, Your Honor.

I believe, Your Honor, and we can provide new copies. It's because of these pop ups that are showing up on the screen. The print was done with all of the pop ups pulled out, so they're covering up, I believe, that blue box.

THE COURT: All right.

MR. SIMON: So we can provide -- and, actually, it's in -- it's in Exhibit 16.19, the clean copy of this document without the --

THE COURT: All right.

MR. SIMON: I apologize for the confusion, Your Honor.

THE COURT: Just wanted to be sure.

Q. Let's go, if we could, to the next slide.

A. The next items I would like to highlight, are items that are related to the manufacturing side and the quality control side. What you see in the center of that drawing highlighted are symbols, circles with edges to them, flags, and the like. And the German words in the center boxes call for first clamping, second clamping, and third clamping of

the part. And on the right side you see the priorities. And they call out for important dimensions and obviously less important dimensions. And the meaning of that is that the worker who has manufactured the part in the various stages of the process, first clamping, second clamping, third clamping, is actioned here to take measurements to make sure that his work has the quality required for the part.

Q. Okay. So we're going to hear more about these little circles and flags?

A. Yes. And what you can see on the left side, they are visible on very many dimensions throughout the drawing.

Q. And are those circles and flags information that was provided in any way by Superior?

A. No. It was never provided by Superior, to my knowledge.

Q. Did you check the Superior 2-dimensional drawing to see whether that information was contained in the 2-dimensional drawing?

A. I certainly made a comparison between the SAP drawing and this TAE drawing. And this information was not contained on the SAP drawing.

Q. And did you also check the engineering orders and any other specifications provided by Superior for this part to see if that information was contained on any of those documents?

A. We looked through the engineering orders and it was not part of the engineering orders.

Q. Okay. So is your conclusion, then, that this information was created and added by TAE engineers?

A. Yes. And that is in line with what was reported to me by TAE engineers.

Q. And who is that?

A. Mr. Deitel.

Q. All right. Let's move on, if we can, to the second example, Professor.

A. Yeah. This, again, is showing the cylinder head assembly that we have looked at previously. And this is, again, the SAP drawing that shows the cylinder start assembly.

Q. All right. And for the record, this is Exhibit IA-16.18. I'm not sure if that one is in evidence or not.

It is. I thought it was.

All right. Let's go to the next slide, if we can, Professor.

And what are we looking at here on this slide?

A. Yeah. This is, again, a view on the 3D PDF model of the part.

Q. Okay. All right. Let's go, if we can, then, to the next slide. And this is Exhibit IA-16.19, page 21, which appears to be a TAE drawing.

Can you tell us what this is, sir?

A. Well, this is the 2D TAE drawing that calls for the same part number. It's representing the same part. And I would highlight, like to highlight a few items, again, on this drawing. The first thing I would like to highlight is on the lower right corner of the drawing. Again, this is a 3D view onto the part. And, again, my take away would be that this drawing can only be derived from the 3D model because it shows the 3D view on the part and is not a direct copy of the SAP 2D drawing.

Q. Okay. So it's clear, the sequence of events, as you understand it is, TAE receives a 2D drawing from Superior, then its engineers create the 3D model, true?

A. Yes.

Q. And then this sort of 2-dimensional drawing comes after the TAE engineers have created their own 3D model?

A. This is exactly right. This is the sequence that was employed.

Q. Okay. What are the other points you would like to illustrate for the Court with respect to this drawing, sir?

A. Well, just the second thing I would like to highlight is a detail. It appears to be a small detail, but it's an important detail. And this details shows some portion of the barrel contour in this drawing. What is highlighted yellow here on the inner diameter of the

barrel --

THE WITNESS: I should probably step up, if I'm allowed to, Your Honor --

THE COURT: You may, please.

THE WITNESS: -- and make that visible to you.

A. There is a little bump showing here. This bump indicates a contour that is labeled on the right-hand side in German words as compensation contour for the shot peening operation. And the apparent meaning of that is they leave some (inaudible word) here on the part. The final dimension is checked after the shot peening operation. And as the shot peening takes place, the final dimension is put on the part. But before that, you have some compensation contour associated with that.

THE COURT: All right.

THE WITNESS: May I step back?

THE COURT: You may, please. Thank you.

THE WITNESS: Thank you very much, Your Honor.

Q. Professor Rienacker, Her Honor may have more experience in engineering matters than I do. But can you explain --

THE COURT: Assume not, counsel.

Q. Or perhaps not. Can you just explain for us what shot peening is and what's going on in that portion of the drawing?

A. Well, yes. Shot peening is an operation in which you try to put compressive stresses into the part. That helps for a longer life of the part and better strength. And what you do there is you take small balls of steel and shoot them onto the part in order to create these compressive stresses.

Now, we highlight this here because it is heavily manufacturing related information. To obtain such a compensation contour, you probably have to do some testing. You have to evaluate what comes out of that operation using different specimen. And this is something that is definitely not open to the public. It's something that a company works hard on obtaining for a stable serious production. And you would never share that with any other party.

Q. All right. Anything else on the contour bumps?

A. Well, yes. Again, I would like to highlight the box that calls out for the symbols, circles with edges and flags. Again, this is related to manufacturing operation. The first manufacturing operation called out here is termed milling. The second operation is final control. And below that you find the shot peening operation. And, again, it makes a difference between important dimensions and less important dimensions. And, again, I would like to highlight that's probably the next step here.

Q. Before we do that, Professor, before we go to the

next step, I need to back up, because I forgot to ask you a question about the shot peening bumps.

THE COURT: Are you saying peening?

MR. SIMON: Peening, I believe. Is it p-e-e-n-i-n-g?

THE WITNESS: Correct.

MR. SIMON: Shot peening, like little BBs, I believe.

THE COURT: No, I get it.

Q. Okay. Professor Rienacker, this call out that we've been looking at that has the yellow bump and the highlighted language in yellow, the information you've just been describing, is that diagram found anywhere on the Superior 2D drawing or anywhere in the Superior materials?

A. No, it's not.

Q. That was created entirely by TAE?

A. Yes, must be so.

Q. Okay. Let's go ahead and move forward, then.

A. What is highlighted here, are all of the circles and flags. And, again, it shows that they are visible throughout the drawing all over the place.

Q. Let me stop you, Professor. For the record, you're referring to IA-16.19, page 21?

A. That's correct.

Q. Okay. I'm sorry to interrupt. You were explaining

what the yellow highlighting is.

A. We just had talked about the symbols that refer to taking measurements after the turn milling operation and at final control and after shot peening operation. And this is highlighting here that these symbols can be found on all of the drawing all over the place.

Q. And are they significant?

A. They are part of TAE's quality control system. And that, again, is something that costs money and man hours. And, again, this is not something that you would share with your customer.

Q. All right. And is that information, these little circles and arrows found anywhere in the Superior information?

A. No, they are not.

Q. You were also present in the courtroom on July 22nd, were you not, sir?

A. I was.

Q. And you were here for Mr. Marwill's testimony?

A. Yes.

Q. Mr. Marwill was Superior's expert witness, right?

A. He was.

Q. You heard -- and you also had an opportunity to review the transcript from the hearing, is that true?

A. I did review that.

Q. And one of the things Mr. Marwill was asked was whether clamping and turning instructions were found in the Superior drawings. Do you remember him being asked that question by Superior's counsel?

A. Yes, I do remember.

Q. And do you recall Mr. Marwill testifying that those clamping and turning instructions could be found on a casting drawing?

A. Yes, I heard that.

Q. Well, I just want to be clear about what we're talking about here, sir. These flags and circles that you have identified for the Court on Exhibit 16.19 page 21, are those clamping and turning instructions?

A. No, they are not.

Q. What are they?

A. They are instructions for the worker to measure after clamping, after turning. So it's dimensional measurements that they are calling out for.

Q. Okay. Did you go back and look for a casting drawing for this particular part? And by the way, what part number are we talking about?

A. Well, in the first place, we are looking at an assembly that essentially contains two important parts. The cylinder head that is made from the casting and the barrel, and the barrel is made from the forging. So you cannot

expect to have any information on the barrel being represented in the casting drawing. It's simply made from a different raw material.

Q. What is the difference between a casting and a forging?

A. Well, in a casting, you pour hot metal into a mold and then the hot metal cools out, solidifies, and that comes to be a casting. On a forging, you take the raw material and hammer that raw material into a metal mold until it gets to the desired shape. So it's entirely different fabrication processes.

Q. Okay. So did you look for a forging drawing, if there is such a thing, for the barrel portion of this assembly?

A. We did look for a forging drawing for the barrel. We did not find that. However, we found similar forging drawing for a different part. And we couldn't locate any of that information behind the flags and the circles on that raw material drawing.

Q. Did you locate, though -- I don't recall whether you said this or not, sir. Did you locate a casting drawing for the portion of this assembly?

A. For the cylinder head, we located a casting drawing. And, again, we could not find any information related to the flags and circles on that raw material

drawing.

Q. And what about the contour bump information that we were looking at earlier?

A. Well, that was certainly not visible on either of the raw material drawings.

Q. And does it surprise you, sir, that the information related to the flags and circles and the contour bump for the shot peening were not found in the Superior data?

A. Well, it doesn't surprise me. You wouldn't expect to find them on these drawings. And the simple reason for that is taking dimensions for quality control is something that you do when the part is being processed and machining probably for the finished part, as called out here. But that has nothing to do with raw material.

Q. All right. The two examples we've been through with the Court so far are both compare the TAE finished part drawings to Superior finished part drawings, correct?

A. That's correct.

Q. Okay. And we've talked about the 3D models, as well, right?

A. We have.

Q. Did you locate other types of TAE drawings in connection with your work in this case?

A. Yes.

Q. Okay. Did TAE create other types of manufacturing

related documents relating to the parts that it supplied to Superior?

A. Well, yes. TAE created manufacturing drawings for intermediate steps in the fabrication of the parts. And we've provided one example here in the exhibits.

Q. Okay. Before we go into that, Professor Rienacker, just very briefly so I can clean up my record here. Is Exhibit 16.19 that we just went through a series of materials that you compiled related to your opinions in this case?

A. Yes.

Q. And do they form the basis for your opinions?

A. Yes.

MR. SIMON: Your Honor, we would offer IA-16.19.

THE COURT: Any objection?

MR. ALEXANDER: No objection on the basis that it's something he based his opinion on, but not for the truth of the matter asserted.

THE COURT: Is that acceptable?

MR. SIMON: That's acceptable, Your Honor.

THE COURT: Very well. It's admitted on that basis.

Q. And, Professor Rienacker, I don't think I asked you this question before, but I'm going to ask it any way. Is this type of information that you have reviewed and you have

compiled in your exhibits, is this the type of information that experts such as yourself in your field of mechanical engineering would typically review and rely upon?

A. Yes. Given the questions that I was asked, this is exactly the type of information I would look at and form my opinion on.

Q. All right. Let's walk through this last example, then, Professor, of the TAE manufacturing drawings that you were able to identify on the USB drive.

I think we have Exhibit IA-21 in front of us. And I believe there are four pages of Exhibit IA-21.

Did you compile those drawings, sir, from the USB drive?

A. Yes. I compiled those with support from the people that work for me.

Q. All right. And do those form, as well, part of the basis for the opinions that you have testified about and are about to testify about in connection with this dispute?

A. Yes, they do.

MR. SIMON: Your Honor, we would offer Exhibit IA-21 into evidence.

MR. ALEXANDER: We have no objection. I would like to say, though, that no objection on the same basis for his opinion. But the Superior drawings needs to be sealed, all of them that are coming in in any fashion for anything.

They need to be under that same order we did earlier about under seal.

MR. SIMON: And I was going to make the same request at the conclusion of the testimony, Your Honor, with respect to the TAE drawings.

THE COURT: All right. And the only -- and that's fine. And so IA-21 will be admitted on the same basis that the other exhibits have been admitted.

Following the conclusion of the hearing, you'll need to work with the court recorder to identify the exhibits that will be under the sealing order.

MR. SIMON: Yes, Your Honor. Be happy to do that.

THE COURT: All right.

Q. All right. Professor, if you could walk us through Exhibit 21, starting with what is identified on the slides as 21.1. Please explain to the Court what we're looking at here.

A. This is a 2D finished part drawing of a connecting rod. The connecting rod is one of the major parts in any piston engine. It connects to the crank shaft on one side, which is rotating, and it connects to the piston on the other side, which is sliding up and down. So this is one of the parts that is exposed to the high mechanic loading in the engine. What we see here is the SAP drawing for that part.

Q. All right. And let's look at the next slide, if we could.

A. Well, this is a TAE drawing for an intermediate step in the manufacturing of that part. It's the first process step. It's called rough machining. So in terms of feets and speed, you have -- you remove a lot of material from that part at this process step.

Q. In terms of what, sir, what did you say?

A. Feets and speed, sorry for that.

Q. What is that?

A. That is the amount of material that you take away is feet and the speed is how quickly you take it away. So this is why it's called rough machining, because you do that in a violent sort of operation.

Q. Okay.

A. Now, we were interested in how many dimensions on this intermediate manufacturing step differ from what was supplied to TAE by SAP. And those dimensions that are different from the SAP finished part drawing, those are highlighted in red color here. So, again, it's quite a number of dimensions that is different -- that are different.

Q. And when you say they're different, does that mean those dimensions are not found anywhere on the Superior drawing?

A. Yes. That's the meaning. They are not found on

the SAP 2D drawing.

Q. And why is that? Can you explain to us why that would be the case?

A. Yes. This part is made from the raw part. And then when you manufacture the parts until eventually you end up with a finished part, you have a sequence of steps that go through that fabrication process. And this is just the first step. And obviously it can be expected that with this rough operation, you leave some stuck on the part in order to be on specification on surface finish and on other dimensions in subsequent steps.

Q. Okay. Anything else on this slide, or should we go to the third page of Exhibit 21?

A. We can go to the next slide. It's the second process step. It's called finishing. Not to get mixed up with the finished part drawing. This is not the last operation on the part, but this operation is called finishing. And, again, we highlighted all of the dimensions that are still different from the finished part drawing that was supplied to TAE.

Q. So, again, when you say different, just to be clear, all of these boxes that are highlighted in red on the third page of Exhibit 21, that information isn't found anywhere in the data supplied by Superior or anywhere on its 2D drawings, correct?

A. That's correct.
Q. And let's go back just one second to slide 21.3. Again, these are -- is it surprising, sir, in any way that this information in red was not supplied by Superior?
A. No, it's not surprising. The way the process goes in the industry is that the supplier is supplied the drawing that shows the requirements of the finished part looks like. And then it's up to the supplier to come up with its finished part from the raw part in a sequence of steps that he defines with his own manufacturing knowledge. So it's not a surprise to find different dimensions on intermediate steps.
Q. All right. Let's look at the fourth page of Exhibit 21, sir. And what do we have in front of us here?
A. Well, this finally is the finished part drawing. This time it has a TAE logo on it. So it's a TAE drawing. And, again, we highlight that all the dimensions here on the drawing match those of the SAP drawing supplied by SAP with one difference and we've spoke about that before. On the upper left corner you see, again, the flags and circles that call out for taking dimensions, measuring dimensions on the finished part.
Q. All right. And those flags and circles that we see on the fourth page of Exhibit 21, which is a TAE created document, just to be clear, are those flags and circles found anywhere in the TAE supplied materials -- I'm sorry, in the

Superior supplied materials?

A. Again, they are not to be found on the SAP drawings or engineering orders.

Q. Okay. Can you summarize for the Court what the significance is of these drawings that we just looked at in Exhibit 21?

A. Well, the significance is that in order to manufacture the part, it is in most cases advisable to create drawings that show those who do the manufacturing and machining how to proceed on the parts. So there is additional material created by TAE that cannot -- that contains information that cannot be found on the SAP 2D drawings.

Q. Did you hear testimony during our first portion of this hearing that Superior 2-dimensional drawings are the recipe for creating the part?

A. Yes, I heard that.

Q. Do you agree with that?

A. I completely disagree with that.

Q. And what do you view to be the recipe for creating these parts, sir?

A. My view on what is supplied by SAP is the requirements as to how the part must look like when it's finished. And the recipe is what we just saw. As an example, all of the intermediate steps and manufacturing that

eventually lead to the finished part that meets requirements. And these intermediate steps are the -- this forms the proprietary manufacturing information of a company. And, obviously, it also defines the cost of manufacturing that part and is, therefore, something that needs to be protected at all price by the company that is manufacturing the part.

Q. Are these examples that we've been through with the Court this morning the only TAE drawings that you located that reveal sensitive manufacturing information that would provide a competitive advantage to a third party?

A. No. They are just examples of these drawings. We found many more drawings that showed us manufacturing related information.

Q. And how is this manufacturing related information treated in the industry, in your experience, sir?

A. It's treated proprietary. It's the competitive advantage that each company has that is manufacturing the parts. And, therefore, it is protected.

Q. Do you have an estimate as to how much time and effort would have been required to create these additional manufacturing related drawings that are so sensitive and proprietary, sir?

A. Well, given the 3D volume models that we talked earlier about, again, it would be thousands of engineering hours spent on these manufacturing drawings.

Q. Okay. One question for you, sir, about a document that I believe you saw last night.

Did you review last night a document, a clean copy of an exhibit that was provided to us by Superior's counsel that had some handwritten circles and flags on it?

A. Yes. I reviewed that.

Q. Okay. Did you make an inquiry as to what those handwritten circles and flags are?

A. Yes. I talked --

MR. ALEXANDER: Objection; hearsay.

THE COURT: Sustained.

MR. SIMON: I just asked him if he made an inquiry.

THE COURT: But he started to explain.

MR. SIMON: Oh, okay.

Q. Who did you speak to about that, or who did you make an inquiry of?

A. Well, I think I spoke to that person later. First of all, I would like to explain my observations on the part.

Q. Please do so.

A. Is it possible, by the way, to show that on the screen so we know what we're talking about?

Q. I don't know if we have it. Do you need to see it?

A. Well, I don't need to see it. It's just making clear --

MR. ALEXANDER: What would you like to see?
THE WITNESS: Exhibit 62.
MR. SIMON: May I approach, Your Honor?
THE COURT: You may.
Q. Hold on just a minute, Professor.
MR. SIMON: Your Honor, the original version of Superior Exhibit 62 we were provided that had the exhibit label on it was illegible, so counsel provided us with a clean copy yesterday, I believe. I guess they think it's important, Your Honor. I'd be happy to put it up here for the Court.
THE COURT: Yes, please.
MR. ALEXANDER: Object to the sidebar, because that's how I spend all of my weekends, blowing up drawings.
Q. All right. When you first reviewed this drawing, Professor Rienacker, did you note anything about it?
A. Well, when I first reviewed that drawing, that was barely legible copy of that and so we couldn't read any of that. Yesterday, we got supplied a better copy and that showed these blue circles and numbers in them.
Q. Okay. And what were your impressions of this drawing when you were provided with a legible copy of it yesterday?
A. Well, the first impression was that it showed something similar to the flags and circles with edges. But

then we realized that the numbers in these circles were being handwritten, which was surprising. From how the numbers were handwritten, I would assume that a European person wrote these numbers. Distinctive differences between the American handwriting and the German or European handwriting. And then we -- well, we tried to locate the (indecipherable word). You know, this drawing has a part number and a revision number to it. We found, I believe, seven or so copies of that SAP drawing on the USB drive, including the revision B that we just look at right now. And none of these drawings exhibited these hand markings on them. So our basic take away was that what we see here was added to the drawing, handwritten and was never part of the SAP drawing revision process for this part number. And that's quite a problem.

Q. So you reviewed both prior and subsequent revisions of this particular part number and did not find any circles or flags; is that correct?

A. Yes, that's correct.

Q. Okay. Do you know what those circles and flags represent?

A. Well, we started to wonder where it comes from. And one of the thoughts was it may come from what is called a first article inspection of the part. And a first article inspection, the supplying source for the part measures all dimensions on the part then provides that information to the

customer and asks for permit to produce the part in serious production. This is only done once for a part. And we believe that this was probably part of that process. Again, the major difference between a first article inspection and what we saw on the TAE drawing is that on a first article inspection, it is a one time process that is probably repeated after a certain number of years, again. But it's a one time process, more or less. And what we see on the TAE drawing is called for being measured every time a part is manufactured.

Then we went back to the designer that we spoke with, Mr. Deitel, and he confirmed that these hand --

MR. ALEXANDER: Objection, Your Honor. That's hearsay, again.

MR. SIMON: Your Honor, the expert is entitled to rely upon inadmissible information in reaching his opinions.

THE COURT: Yes. But this feels like he's using it to prove the truth of what his conclusion about it, not as the basis to form his opinion.

MR. SIMON: Well, may I ask him a question?

THE COURT: You may.

Q. Did you speak with Mr. Deitel about this information?

A. We emailed about that.

Q. Okay. And did Mr. Deitel confirm what you believed to be the case?

A. Yes, he did confirm that.

Q. In other words, that these circles and flags were added by TAE as part of the first article inspection process?

A. It was the typical thing to do on a first article inspection.

Q. Okay. So these circles and flags are completely different from the circles and flags found on the manufacturing related documents you were referring to earlier?

A. That's my opinion.

Q. All right, Professor Rienacker. Let's move on to your next opinion and the series of slides that relate to your opinion number 5, if we could.

A. Shall I read that?

Q. Please.

A. All information contained in the SAP 2D drawings can be readily obtained independent from SAP with moderate effort. For important parts and worth, the essential information in the SAP 2D drawings can be obtained at a reasonably low cost through internet research and engine manuals. This essential information is mainly established from the OEM engine overhaul menu, which contains all of the engines and tolerances in exact numbers important for

assessing air worthiness and interchangeability of the spare part. These aspects of the spare part form the basis of the parts commercial value. The remaining information contained in the 2D drawing if and to the extent any of it is not publicly available, can be readily and independently established to such a degree that neither the quality of the part nor the interchangeability of the part are compromised. That's all necessary information in the SAP drawings provided to TAE is either publicly available or readily ascertainable.

Q. All right. That's quite a bit of information Professor Rienacker. And what I'd like you to do is explain to the Court what you did to go about arriving at that opinion.

A. Well, what we did was we tried for a certain number of parts to obtain the full history of the parts, which means that we tried to figure out if we could obtain the information to which engine these parts would go. And if we could find engine overhaul menus for that engine describing a portion of that part. And then we would go ahead and take a look at the drawings and find similarities between the information provided by the overhaul menu and the, for instance, SAP 2D drawing. And then we would assess how much information came in the drawing from the overhaul menu and how much remaining information there would be to be determined, a good approximation. And then we assessed how

good we believe we could assess that information to the degree that the quality was equivalent or even better compared to what we had found on the SAP drawing.

Q. Okay. Well, I think, or at least I hope it will be helpful for the Court if we walk through an example of that. So let's go to the next slide.

A. Yes.

MR. SIMON: Which is Exhibit 16.19, which is already in evidence, Your Honor.

Q. And this is page 1 of Exhibit 16.19.

Please explain to the Court what it is we're looking at here, sir.

THE WITNESS: Your Honor, could I step up and explain that to you on the screen?

THE COURT: You may. Please.

Q. Now, first of all, we looked at the part number. And the first question is always can we find to the part number the engine that it belongs to. This is some information that is available through the internet page from Superior Air Parts. And here is the part number that we have looked at up to now, 4706L-A1, the cylinder, start assembly that we have seen a number of times in the past hour. We actually found the engine that it goes to. It's a Continental engine. And it's name is IO470. And you see some of the variance of the engines depicted by letters

behind the engine name. So basically we can find the engine that belongs to the part. The next page shows that we find the engine menu related to that engine. And the source where we found that is depicted here in the blue letters. It's not the red stuff here. It's the blue letters that we have here on that exhibit.

Q. So, Professor Rienacker, where -- where did you find that maintenance and overhaul manual?

A. Well, it was available through the internet and free of charge.

Q. Okay. Let's look at the next slide.

A. What you see here is the table of contents for such an overhaul menu. And I would like to talk a little bit about the overhaul menu should mean to the person using that. The overhaul menu describes what needs to be done when an engine is overhauled and maintenanced. So there is instructions for the disassembly of the engine, instructions for the cleaning of the parts, instructions for the inspection of the parts, instructions that describe how to determine if a part is a air worthy or must be repaired or even scrapped. Cannot be used for flying any more. And it also describes the tooling that is required to disassembly or assembly of the engine. It explains how to assemble the engine deck to its full state. And then it even describes how the engine is tested to be released into field again.

Q. Professor, is this manual a couple of hundred pages long?

A. Yes, it is.

Q. Very long and detailed?

A. Yeah.

How, what we highlighted here in blue is that the cylinder that we talk about can be found in the overhaul manual. And it starts at page A-10-1.

Q. Do we have that page on a slide?

A. Yes, we do. Go to the next slide. That is page A-10-5. And this shows the graphical representation of the cylinder start assembly -- sorry. Thank you very much.

It shows the graphical --

THE COURT: It's a recorder not a -- I think it's on.

THE WITNESS: Sorry. Please tell me if I'm too loud.

A. It's a graphical representation of the cylinder start assembly. You will recognize these figures here. And it shows highlighted in the yellow color dimensions that we found exactly on the SAP 2D drawing. So that explains the yellow color. We also find something that is depicted in a green color. Here, the important information that this surface finish quality in this case is described in the engine overhaul menu. SAP choose to be -- to request a

better quality for the new part. But, still, this information can be obtained through the engine overhaul menu.

Q. All right. Anything else on that slide, Professor?

A. Nothing on this slide.

Q. Okay. Let's go to the next page, if we could.

A. Well, this is a sample page that is showing the information that is contained in the engine overhaul menu. There are tens and dozens of pages of this sort explaining dimensions on the various parts of this engine. Now, we confine ourselves to the cylinder start assembly, which is highlighted here. And what you can see, again, is highlighted in yellow colors something that was exactly found in exact numbers found on the SAP 2D drawing. Again, what is highlighted in green is something that SAP choose to be a better quality on this part, but still can be found in the engine overhaul menu. And you see that we find a column that calls for service limits. That is for worn parts. But we also see on the right-hand side, two columns that are describing new parts, minimum and maximum dimensions. So the important take away is that we find dimensions for worn parts that have run in the engine, but also dimensions for new parts that will be built in the engine. And I should point out that the information contained in the engine overhaul menu is the information required to determine the air worthiness of the part and the interchangeability. And that

information is the most valuable and important information for the part at question.

Q. All right. And just so, I think this is clear, Professor Rienacker, but just so it is, this page that we're looking at here, let's back up to the page we were just looking at. This page that we're looking at, this is just one of the pages for one of the parts that's found in the engine overhaul manual. There are lots and lots of dimensions provided for new parts for -- in this manual, correct?

A. That's correct.

Q. All right. Let's go to the next slide, if we can. Tell us what we're looking at here. And just for the record, this is Exhibit 16.19 page 19.

A. This is, again, the SAP drawing for the cylinder start assembly SA47006L-A1. This drawing shows, again, highlighted in different colors dimensions that we categorized. Now, first of all, I would like to highlight again dimensions given in yellow color. Those are the dimensions directly found in the engine overhaul menu with tolerances associated to them. Again, we highlighted in the green color those dimensions that can be also found in the overhaul menu, but are called out here with a better quality for the part. And then we took a look at all of the other dimensions that were not part of the engine manual. And that

exercise we set together with one of my deputies, a very experienced engineer holding a PhD also in mechanical engineering and a very experienced designer from our area. And we took a look at the dimensions that we were not given in the engine overhaul menu. We categorized these dimensions with the colors purple, red, and light blue. And all of the dimensions given in purple color are equipped with standard tolerances that are called out for the drawing here. Those standard tolerances are wide opened tolerances, so we wouldn't find any problem in establishing these dimensions with tolerances, if given only one part to take measurements from.

The next category would be the red colors, red color dimensions. Those are fewer in number and they call out for special tolerances where the designer considered what he was doing in more detail. Some of them call for wider tolerances compared to the standard tolerance. Again, these are very easy to determine. The other -- some of the other ones call for tighter tolerances compared to the standard tolerance. Again, these are also easy to determine, but require some extra thought to them.

Last category refers to only basically two dimensions here on the barrel itself.

Q. And these are the light blue ones, Professor?

A. The light blue ones, that's correct. And the light

blue ones are 2-dimensions where the diameter of the barrel is a little bit tighter compared to the rest of the barrel here. And that accounts for the thermal environment that the part is subjected to when it's being operated. So it's still easy to determine, but a little bit more complicated because a person needs to have some experience to take a measurement at this location and then figure out the thermal expansion that would happen there. Again, all of the dimensions we would consider to be readily ascertainable, if not given from the engine manual.

THE COURT: I don't see -- there is a brown color, changes apparently approved. I don't see that on the chart anywhere.

THE WITNESS: Yes. That's -- well, it is, I believe, some dimension highlighted here. It is not important, because that talks to the 59 minor changes that TAE had proposed to SAP to be introduced into the drawings at the time that -- when we prepared this. We just wanted to make sure that this was included there. It's not --

THE COURT: All right.

THE WITNESS: -- important for this case.

Q. Anything else that you'd like to point out for the Court with respect to this drawing?

A. Yeah. We tried to categorize basically what the dimensions and tolerances, especially, that we found on the

drawings. And this is highlighted here in this box on the upper left corner of the drawing. It shows the standard dimension point 005 mils, that's thousands of an inch. And that's a very wide tolerance. We found 60 dimensions on the drawings were equipped with that standard tolerance. We found even 24 tolerances that were wider open than the standard drawing tolerance. And just six tolerances on the drawing that were tighter than the standard tolerance.

Q. Okay.

A. Thank you very much.

Q. Would you like to return to your seat now?

A. Yes, I would like to do that.

THE COURT: All right, please.

THE WITNESS: Thank you very much, Your Honor.

THE COURT: Thank you.

Q. Professor Rienacker, Did you go through and perform this same detailed analysis for every part that TAE made for Superior?

A. Certainly not. But we picked like the four most important parts, complicated parts that we figured were relevant in the case. We performed that with the crank shaft, with the connecting rod and with two cylinder start assemblies. And we came always to the same conclusion, that we could readily ascertain what was not available through the engine overhaul menu.

Q. And can you then summarize what all of this means to you in terms of the availability of the information necessary to recreate the data Superior supplied to TAE?

A. Well, in the first place, the most important information is available through the engine manual. It is the information that determines the air worthiness of the part and the interchangeability of the part. And forms the commercial basis for the value of the part. And then all of the other information is readily ascertainable for an experienced engineer probably with some consideration to it.

Q. How long has that sort of information been available, sir?

A. It has been available for a long time. Many, many years.

MR. ALEXANDER: Objection. What information?

THE WITNESS: Like engine overhaul menus.

MR. ALEXANDER: The engine overhaul menus, thank you.

Q. And you're talking -- what about the ascertainability of the other information? Has that also been ascertainable for the same period of time?

A. Well, yes. I mean, we did an extra exercise just to be sure we're not missing anything. We took two parts from the automotive engines that we are familiar with. These parts were designed in the '90s, 1990s. And we found, for

instance, that the tolerances on these parts were much tighter compared to what we found on the SAP drawings. And this enables us to say, you know, that the SAP drawings and the parts that are represented through them are actually from a technology that is 50, 60 years old.

Q. Professor Rienacker, did you exhaustively search all potential public sources for the information that's contained in the Superior drawings and data?

A. No, we did not. We confined our search to the engine overhaul menus.

Q. Okay. Did you, for example, go to libraries or the military or make any Freedom of Information Act request?

A. No, we did not.

Q. When you issued your opinions in this case, the week before the July 22nd hearing, I believe, is when it was, maybe two weeks before, at the point in time you issued your original opinions, were you aware of the testimony that you heard from Mr. Dedmon this morning regarding the availability of this information in the public domain?

A. No. We were not aware of that. And I should say I thought my opinion independently.

Q. Since you became aware of that testimony, have you given consideration to it?

A. Yes, I did.

Q. And what, if any, impact does it have on your

opinions?

A. Well, I considered that some of the engines that we talk about, like the O320 engines, and also the IO -- the O470 that has to do with the IO470, they were certified in the early 1950s. So the design stems from probably the '40s or even earlier. And it could well be that you find information from the military system that is covering the engines and the parts in the engines. And also the other sources that you mentioned, it could well be that you find the information in there.

Q. All right. I think we're pretty close to wrapping up, Professor Rienacker. The last series of questions I have for you relate to the slides you've created regarding Superior's Exhibit 56 first and then 57.

What -- do you have on the screen in front of you a slide from the first page of Superior Exhibit 56?

A. Yes, I do.

Q. Okay. And what is the title of that document?

A. The title reads, File locations of original Superior documents and information on TAE server. Superior requests return of these files, pursuant to the confirmation order.

Q. Okay. Have you undertaken a search of some of the directories that are listed in Exhibit 56 to see whether or not there are documents located in those directories that

contain the TAE logo and, therefore, appear to have been created by TAE and not by Superior?

A. Yes, we did that search. We did not exhaustively look at everything. But we did find some drawings that show the TAE logo on them.

Q. Okay. Let's go to the next slide, if we can.

A. Now, this is line item 31 of the list. And it specifies a certain directory. In this directory, we found two files that bear that TAE logo on them. The first file is showing a bushing like depicted here.

Q. Let me make sure our record is clear.

MR. SIMON: So can we go back a slide?

Q. So we're clear, the call out that you're referring to is line item 31 on SAP Exhibit 56, correct?

A. Correct.

Q. And it says SV13923A and then there's a lot of stuff that I don't understand, because it's in German, right?

A. Correct.

Q. Okay. And so if we go to the next slide, slide 34, is this a document that was located within that directory on line item 31?

A. Yes, it is. And it shows a drawing with a part number SV13923A-A on it. And that's the bushing that we look at right now.

Q. Okay. And that is Exhibit IA-24, Your Honor. And

we would offer it for the same purposes as the other exhibits offered in connection with Professor Rienacker's testimony.

THE COURT: Any objection?

MR. ALEXANDER: Your Honor, I don't have any objections to the drawings, because I -- first of all, we received these drawings some time last night after I was trying to go to sleep. I think I know what the drawings are. I have no idea what the thing in German says, since I don't speak German. So I have -- again, we're searching for the truth here. So I don't have an objection to the drawings, because I have something to offer on those. I don't know what the thing in German is. So I object to the thing in German, I guess, is what I would say.

THE WITNESS: Well, sorry for that. May I speak?

MR. SIMON: Your Honor, would the Court like the witness to interpret the German, or -- we're simply offering this document to show that it appears to be a TAE created document and not a Superior created document.

THE COURT: For that purpose, I'll allow it to be admitted. I leave it, Mr. Alexander, to you if you want the witness to tell you what the German information on the document is.

MR. ALEXANDER: I may ask him that in cross-examination.

MR. SIMON: And just to be clear for the record, Your Honor, I'm not sure what German language counsel is referring to. But Exhibit 56 is Superior's exhibit, not the Insolvency Administrator's exhibit and it contains German, as well.

MR. ALEXANDER: We know what that German says.

THE COURT: All right.

Q. Okay. Professor Rienacker, did you locate a couple of other examples of documents that appear to be TAE documents that were contained in the directories found in Exhibit SAP 56?

A. Yes. This is a plan to measure certain items that bushing, which was also located in the same directory.

Q. And this is Exhibit IA-25?

A. Yes.

Q. And that was located within the directories found in Exhibit 56?

A. It's exactly in it. It also bears the TAE logo on it.

MR. SIMON: Your Honor, we would offer it for the same purpose.

THE COURT: Any objection?

MR. ALEXANDER: No objection.

THE COURT: It's admitted for that purpose.

Q. And if we could move along to the next slide.

A. Yeah. This calls out for line item 75, SL36800.
Q. Okay. And did you find a document located in that directory that also bears the TAE logo?
A. Yes. It's not well visible here, but it's the TAE logo on the part that he has called out as IA-26.
MR. SIMON: And, Your Honor, again, for the same limited purpose, we offer Exhibit IA-26.
MR. ALEXANDER: Explain to me again, if you don't mind counsel, what that limited purpose is?
MR. SIMON: Limited purpose is to show that documents were found within the directories contained in Exhibit 56 that bear the TAE Logo. Because our understanding of the testimony regarding Exhibit 56 was that every drawing contained in those directories was supplied to TAE by Superior.
MR. ALEXANDER: No objection on that basis, Your Honor.
MR. SIMON: Thank you, Your Honor.
Q. Let's go to the next slide, if we can, please.
And what are we looking at here, sir? Is this a copy of Superior's Exhibit 57 with the heading pulled out and highlighted?
A. I believe so.
Q. Pulled out, okay. And what does that heading say?
A. It says, Summary of file locations of duplicate

Superior documents and information on the TAE server. Superior requests return of these files pursuant to the confirmation order.

Q. Okay. So is it your understanding based upon the testimony offered by Superior's witnesses in this case that Superior contends that the information contained in the directories of Exhibit 57 are simply duplicates of Superior documents?

A. Yes. That appears right.

Q. Did you undertake a review to determine whether or not you agree with that?

A. Yes. We tried to locate the directories in commission and find information that we think are not proprietary to Superior.

Q. And what did you find when you reviewed the various documents contained within the various folders that are contained within the various directories of Exhibit 57?

A. Well, Exhibit 57 is a very long list. I believe it's got 24 or something pages. We reviewed the first three pages and visited every subdirectory called out here. And about 80 percent of the material that we found, we think relates to information that TAE created.

Q. And when you say, information TAE created, when you reviewed portions of the folders and files that are listed in Exhibit 57, did you find the types of documents that you have

been describing and discussing before the Court here this morning that contained the TAE manufacturing related information?

A. Exactly that is what we found.

MR. SIMON: We'll pass the witness, Your Honor.

THE COURT: Very well.

Cross-examination?

MR. ALEXANDER: Yes. Can we have a short break?

THE COURT: We may. How much time do you need?

MR. ALEXANDER: 5 minutes.

THE COURT: Perfect. We'll be back in 5 minutes.

(Brief recess ensued.)

THE COURT: Please.

MR. ALEXANDER: Ready?

THE COURT: Yes.

MR. ALEXANDER: Jerry Alexander for the movant.

CROSS-EXAMINATION

BY MR. ALEXANDER:

Q. Mr. Rienacker, I took your deposition in this case earlier, didn't I?

A. Yes, you did.
Q. On Sunday, I think?
A. Sunday afternoon.
Q. I think it was a Sunday afternoon we spent together.
A. July 20th, or something like that.
Q. July 20th, about.
I think I got something wrong in your deposition or from your testimony. I thought from your testimony in the deposition you told me that you didn't have any experience in the piston aircraft industry.
Did I hear that wrong?
A. I told you I didn't have any experience?
Q. You said, Not directly, I believe was your answer.
Do you have any experience in the piston aircraft industry?
A. I have worked in the aircraft engine industry, yes.
Q. Piston aircraft industry.
A. I also --
Q. Piston aircraft industry.
A. So far not in the piston aircraft engine industry.
Q. Not in the piston aircraft engine industry?
A. That's correct.
Q. Now, that might be an explanation for why you say that Superior has parts drawing has wider tolerances on its

parts and that means that they're not up-to-date or as good as modern things, they're old parts?

A. I think that's probably not the logic behind.

Q. Do aircraft engines work at altitudes?

A. Yes, they do.

Q. And they have to work at those altitudes, don't they?

A. Certainly they have to do that.

Q. Is it colder the higher you go up?

A. Definitely is.

Q. And if you have a tight tolerance and that tolerance tightens up even more because it's cold, then that could be a problem, couldn't it?

A. The parts shrink, not the tolerances.

Q. The tolerances are looser in aircraft engines because the temperature (indecipherable word); is that accurate or not?

A. To be honest, I wouldn't think so.

Q. But you don't know?

A. I don't know. But the tolerances --

Q. If you don't know, you don't know.

Are you a designated engineering representative by the Federal Aviation Administration?

A. I'm certainly not.

Q. When making your opinions when you were talking

about what drawings or parts -- drawings are identical between Superior and TAE drawings, what scientific or governmental recognized standard did you use in making those comparisons?

A. Well, what did you say about identical?

Q. Did you make a comparison as part of your opinions on whether or not a Superior drawing was the same as a TAE drawing?

A. Yes. I made an opinion, yes.

Q. And in making that opinion, did you use any recognized scientific or governmental standard for identicality?

A. Well, I did use an engineering standard. And I'm a professor in engineering.

Q. What engineering standard did you use?

MR. SIMON: Your Honor, can the witness be allowed to complete his answer to the questions, please.

MR. ALEXANDER: Sure, go ahead.

THE COURT: You're both stepping over each other just a little bit. So let Mr. Alexander finish his question and then answer and so forth.

THE WITNESS: Yes, I will, Your Honor.

Q. It was an unartful question. Let me ask a better question.

The standard that -- did you use any FAA standards to

make that determination?

A. No. I didn't use any FAA standard. However, I'm aware of these standards.

Q. Did you use any standard that you can refer me to that's published in some publication or engineering standard that says what means one drawing is the same as another?

A. I would think it's an engineering judgment that comes to that conclusion.

Q. So it's a judgment. So you could have one judgment and another engineer could have another judgment?

A. We saw that in this case.

Q. Thank you.

Now, did you prepare -- you prepared a summary of your opinions in this case; did you not?

A. I did prepare that.

Q. And you testified some, you told the judge about some of those opinions; did you not?

A. I did.

Q. I believe they had the summaries of the opinions up on the screen?

A. Yeah.

Q. Do you have a copy there of your opinions?

A. Yeah, it's Exhibit 17, 16.17, probably.

Q. I don't want to introduce it into evidence. I just want to ask you if you still think that everything you said

in that opinion is accurate, is the same as it was before?

A. Yes, it is.

Q. You don't want to change anything?

A. No. I don't want to change anything.

Q. I'm going to read you something from your opinion. And you tell me if it's still the same, okay? I'm going to read to you from the scope and background part of it.

Do you see that at the top?

A. Yes. Yes, I do.

Q. It says, I understand that SAP -- was used for Superior? SAP means Superior in your opinion?

A. Yes. SAP stands for Superior Air Parts.

Q. Okay. Can I say Superior instead of SAP so the record --

A. Yes, you can.

Q. I understand that Superior 2D detailed drawings for various aircraft engine parts were supplied from Superior to TAE in an effort where TAE was asked to manufacture these parts for Superior who would market them under a Federal Aviation Administration (FAA) parts manufacturer approval (PMA) license.

A. Yes.

Q. Do you still agree with that?

A. Yep.

Q. Next part. I understand in addition that TAE

created 3D CAD, computer aided design models (volume models) from these drawings.

I read that correctly?

A. Yeah, you did.

Q. Do you still agree with that?

A. Yes.

Q. And so what TAE did was it got the Superior 2-dimensional drawings that Superior supplied to TAE under the supplier agreement and made their 3D CAD models from those 2-dimensional drawings?

A. Uh-huh, yes.

Q. That's right, that's what they did?

A. That's correct.

Q. And then after that, from those 3D CAD models that had been made from the Superior 2-dimensional models, TAE made some 2-dimensional models and put a TAE sticker on it; is that right?

A. That's correct.

Q. So it's a fact then, is it not, that all of the TAE 3D CAD models and all of the TAE 2D drawings contain Superior dimensions, tolerances, information, and data that were originally supplied by Superior to TAE under the supplier agreement?

A. Yes. The 3D volume models contain information that was also present on the 2D drawing supplied by SAP.

Q. And did the 2D drawings made from the 3D drawings after that, correct?
A. Naturally.
Q. Excuse me?
A. Naturally.
Q. Naturally, they would have to.
A. Yes.
Q. So every -- every TAE drawing, or drawing with a TAE logo on it, 3D or 2D that you've talked about in this has Superior's dimensions, tolerances, information, and data contained in those drawings?
A. That's correct.
Q. How many -- drawings for how many different parts did Superior supply to TAE under the supplier agreement?
A. Well, that's a number that is difficult to assess. We thought about that. We found a directory on the USB drive that contains many drawings, over 700 of them.
Q. Okay. There were over 700 drawings. I have a number of 700 drawings. But my question is simpler than that. For how many parts? Because some parts would have more than one drawing.
A. Well, some parts would have more than one drawing. And we found drawings with identical part numbers, but different revisions under the 370. So over all, I believe the correct number here concerning the number of drawings

would be roughly 360 or something, not 700. And then only a portion of them -- apparently with the information that I've seen quite recently, only a sub-portion of them were parts that were manufactured by TAE for SAP.

Q. Do you know -- if I told you that 362 parts, drawings for 362 parts had been sent to TAE by Superior, would you disagree with that?

A. I would not disagree with that.

Q. Do you know how many of those 362 parts TAE actually manufactured for Superior?

A. I've seen a list that contained about 48.

Q. 48 parts?

A. Line items, yes, parts.

Q. So out of the 362 parts that Superior sent drawings to TAE for, tAE only actually manufactured 48 of them?

A. That is probably right.

MR. SIMON: Your Honor, may I assert an objection here? I think counsel made a representation as to the number of parts and asked whether or not the witness would disagree. I don't believe the witness has personal knowledge of these numbers. I don't believe they have been established anywhere in the record.

THE COURT: Sustained.

Q. Did all of the Superior Air Parts drawings that you reviewed contain a proprietary right stamp by Superior?

A. I didn't check on all of them. That was not the intention, the attention I paid to the drawings, but I saw a proprietary stamp on many of them.

Q. Did you -- did you see any Superior drawings that you recall that did not have a proprietary right stamp on them?

A. I cannot say. I didn't pay attention to that too much.

Q. Did -- in your review, did you see any TAE drawings that had a TAE proprietary right stamp on them?

A. Again, this is something that I have not looked at in detail.

Q. Well, here are examples of two drawings. Why don't you get up and come over here.

THE WITNESS: Can I stand up, please?

THE COURT: You may, of course. And, Mr. Alexander, why don't you stay close to the microphone and, Ms. Whittington, do you have a handheld mic that you can give the witness?

Q. These two drawings are examples of TAE 2-dimensional drawings; is that accurate?

A. Yes.

Q. What you've been referring to as TAE 2-dimensional drawings.

Do they have proprietary right stamps on them?

A. I do not see a big stamp saying proprietary. Some of the wording here I cannot really read, because it's too small to be readable. On this one I cannot readily see any proprietary stamp on it.

Q. Now, these two drawings, which are IA-16.36 and IA-16.19, those are exhibits that were -- bene proffered by TAE, correct?

A. Proffered?

Q. Well, they're TAE exhibits?

A. Yes. Well, they have the TAE logo on them, yes.

Q. Right. And the one on the right is what part number? Can you read that?

A. That's SA47030. And that's the cylinder barrel that we have talked about a number of times today.

Q. And what's this --

THE COURT: Mr. Alexander, back to the microphone, please.

MR. ALEXANDER: I'm sorry.

Q. And what's this, the drawing over here on your left?

A. That is named SA52005-K.

Q. And the note that you wrote -- and I understand the requested in the big box. What's the note that you wrote on each drawing in the little box?

A. On this one?

Q. Yes, sir.

A. TAE 2D manufacturing drawing for SA52005, revision K showing sequence of manufacturing, first clamping to third clamping. In each set clamping the sequence of operation lightly indicated by numbers. TAE proprietary, and there was a spelling mistake, I apologize for that, proprietary manufacturing detail.

Q. Does the outer note say that same thing on 16.19 down at the bottom?

A. TAE 2D manufacturing drawing for SA47030 showing sequence of manufacturing first clamping to third clamping. In each clamping, the sequence of operations lightly indicated by numbers, TAE proprietary manufacturing detail.

Q. Why did you use the word likely?

A. At this point in the process where we established this, we had not the information yet as to what the sequence of number would really call out for. We know by now that it calls out for measurements to be taken.

Q. Likely means it could be something else, other than a manufacturing process, doesn't it?

MR. SIMON: Your Honor, may I ask if the witness is done and may return to his seat?

THE COURT: Is there anything else on the drawings he needs to look at?

MR. ALEXANDER: Yes. I think there was a

question pending.

Does likely mean it could be something else, other than a manufacturing sequence?

A. At the time when we prepared exactly this slide, we didn't know exactly what it was calling out. But it was highly likely that it was a manufacturing sequence or a quality control sequence, which is also part of manufacturing.

Q. So it could be for quality control?

A. Yes.

Q. Now, what you're saying belongs to TAE are these little flags and little circles that are on those two drawings? What's proprietary to TAE? You used the word, what do you think is proprietary to TAE?

A. Well, I believe I'm not the one to be claiming what TAE is claiming to be their own. I was commenting on this is one example of something that is proprietary to TAE on these drawings. Obviously since these drawings have been derived from the volume 3D models, and there is a lot of work in these 3D models, you know, obviously this could also be claimed to be TAE's own independent work.

MR. ALEXANDER: I know I should ask to strike that, I'm not because I'm going someplace else. We'll just save time.

Q. Here's what -- let me ask the question. Is there

anything on the drawing, besides these little flags and these little circles, that you think TAE is claiming is proprietary?

A. Well, let me put it this way. What I see here is a part number. And the same part number appears on an SAP 2D drawing. So, essentially, these two drawings would describe the same part.

Q. Let me stop you right there. So the TAE drawing is a copy, basically, of the Superior 2D drawing, except it has some flags and circles on it?

A. Well, this is what I disagree with.

Q. You disagree with that. Let me ask you this. The dimensions, these flags and circles, they point at dimensions; do they not?

A. They do.

Q. Those dimensions that they point at our Superior dimensions, correct, dimensions that came from the Superior 2D drawing initially?

A. You find the same dimensions very likely, because you've got the same part number on Superior supply drawings.

Q. And TAE, what TAE's job is is to check and make sure those dimensions match the Superior 2D drawing?

A. That is not entirely correct. What I pointed out here is that you have certain stages of manufacturing in which you clamp the part, first clamping, second clamping,

third clamping. You probably turn the part around from the first clamping to the second clamping. Again, turn the part around to the third clamping. Now, these operations may refer to intermediate manufacturing stages. And, therefore, you wouldn't expect everything to be called out.

Q. Are the dimensions on that TAE drawing for 47030 different than the dimensions on the Superior drawing?

A. I don't believe so, because it's the same part number.

Q. Is the same true for this one over here, SA52005, are the dimensions on that drawing the same as on the Superior initial drawing?

A. They must be the same to the same part number from an SAP drawing.

Q. I want you to look -- can you read the notes over there on the left --

A. These notes?

Q. Yes, sir. And they're in German.

A. Yeah. Again, they call for first clamping, second clamping, and third clamping.

Q. No, no, not those notes. The ones on the left-hand corner down at the bottom. Can you read those?

A. This is hard to read.

Q. Can you read me -- just look at, can you read note 14 on SA-52005?

A. It says, Probably no changes on manufacturing processes of this part without prior consent of Superior.

Q. Can you read note 13 on this other drawing, SA-47030 that's Exhibit 16.19, over here?

A. Would you allow that I check for the context of that remark on the part?

Q. No. You can do that.

A. Well, it's a note 14, which must be found somewhere on the part. So probably this note would not apply to everything on this drawing.

Q. It wouldn't? It could apply to everything on the drawing, couldn't it?

A. If you have a 14 all over the place, then, yes. I would like to look for the 14.

Q. Okay. Look for the 14.

A. Yeah. I see 17. Actually, the representation of the part of this copy of the drawing is not good enough to really allow for looking for 14. If you looked in the PDF file, you could probably easier identify the number 14. And I would assume that you have probably one, two, or three locations where that remark with the number 14 would apply to. And you can probably help me in that.

Q. What if you don't have a mark for 14? What if there's not a mark for 14 at all? Does that mean it applies to everything?

A. I wouldn't think so. I would think that this remark doesn't apply to the part at all. There is always a link to a certain location on the drawing.

Q. Go over here and read note 13.

A. Note 13.

No changes in the manufacturing process of this part without prior consent of Superior to be performed. So that's 13.

Q. Did you find a 13 on there?

A. I would hope so. I see 11, 5, 9, 10, 7, 7, 12. Actually, I don't see 14.

Q. You're looking for 13 on that one.

A. 13, sorry.

Q. You didn't see a 13?

A. Not at first glance. Sorry for that, but I'm not quick enough.

Q. Isn't the German word in the note, doesn't it say for this part on the note --

A. Well, we've seen a certain number of these items called out. And, therefore, I would expect to find an individual dimension specified with the remark 13 here.

MR. ALEXANDER: Okay. I'm going to ask that that be struck as non-responsive.

THE COURT: Sustained.

Q. I'd ask you to read note 13 again, please.

A. No changes to the manufacturing process for this part without prior consent of Superior.

Q. Now, that said, this part, correct? You just read it to me.

A. There is more than one meaning to the word part.

Q. The part should mean the entire drawing, correct?

A. Again, I said there was more than one meaning to part. It could be that location in the part is also a part, part of the drawing.

Q. What location?

A. Well, the location I was looking for when I was looking for remark number 13.

Q. But there's not a remark number 13 on that drawing.

A. Well, I didn't have time enough to confirm that.

Q. Take some more time, if you want to.

A. Well, can we have a PDF file that I can search for better representation?

Q. Well, not right now. Why don't you have a seat.

A. Thank you very much.

Q. Thank you.

THE WITNESS: Thank you very much.

THE COURT: Thank you, Professor.

Q. Who is the manufacturer of this part, according to Federal Aviation Administration regulations?

A. Thinking about the regulations, they call out that

the manufacturer of the part, a PMA part in question here should be a US based company. I would assume the manufacturer under FAA ruling is SAP.

Q. Is Superior?

A. Yes.

Q. And that means that Superior is responsible to the Federal Aviation Administration and to the public for this part's air worthiness and for every step in the manufacturing process; does it not?

A. And that is quite natural, because SAP is the holder of the PMA.

Q. SAP, or Superior, holds the license from the Federal Aviation Administration to make this part and nobody else can make it under that PMA, correct?

A. Nobody else can sell it.

Q. Nobody else can make that part under that PMA approval?

A. Well, I mean, in the common sense of the word manufacturer, you would think TAE is fabricating the part.

Q. The supplier is the fabricator. But by law, Superior is the manufacturer, correct?

A. Yeah, that's correct.

Q. And that's why the note is on the TAE drawings that no change can be made in the manufacturing process without the prior consent of Superior, correct?

A. Well, thinking about what I've seen right now, those are finished part drawings. We've seen drawings for intermediate stages of the manufacturing that probably don't call out for that comment. So I would have to think about that a little bit more.

Q. Let's talk about the intermediate steps you were talking about. Okay?

A. Yes.

Q. Let's look at -- you have some intermediate steps here on you say some manufacturing drawings in Exhibits 21 and 22, as I recall; is that right?

MR. ALEXANDER: Your Honor, it's going to go faster and I would like to thank counsel. They said we could use the same thing they've been using.

THE COURT: Of course.

MR. ALEXANDER: Very courteous of them.

Q. Now, do you have one of these that you can look at?

A. Not yet.

Q. Or you can come up here and stand, but I don't want you to have to stand up the whole time.

MR. SIMON: Your Honor, may I approach?

THE COURT: You may.

THE WITNESS: Thank you very much.

THE COURT: Thank you, Mr. Simon.

Q. Now, 21.2, the second drawing in 21 -- well, I'm

sorry, yeah, 21.1 is the first one and 21.2 is something that you said had -- was a manufacturing step, correct?

A. Correct.

Q. Did you also say that when somebody did these manufacturing steps that that was important to know, because that's how they priced the part?

A. That's correct. Based on the sequence of steps, you would be able to make a quote for the part.

Q. That's important, because that's how much it cost to make the part?

A. Yes, it is.

Q. So when TAE sold any parts to Superior, TAE was paid for these manufacturing drawings, that was included in the price of the part?

A. Well, I'm probably not judging on the commercial side of the business. And -- right?

Q. Well, but that was your testimony earlier, that when a manufacturer does this, they include it in the price of the part.

A. I never did make that statement.

MR. SIMON: Your Honor, I object. That mis-states the witness' testimony. He offered no such testimony or opinion.

MR. ALEXANDER: I think he said that.

THE COURT: Well, I'll let you explore whether

he did or didn't say that. But that's not necessarily how I understood the statement to be.

MR. ALEXANDER: We'll move on. We'll move on.

Q. Drawing 21.1 is a Superior drawing; is it not?

A. It is a Superior drawing.

Q. And drawing 21.2 and 21.3 are what you call manufacturing drawings. And then 21.4 is what?

A. That's a TAE finished part drawing.

Q. And 21.2 and 21.3 are intermediate steps to get from a forging to the finished part; is that accurate?

A. That's correct.

Q. And who sent the forging drawing to TAE?

A. I believe the forging drawing sent to TAE is an SAP drawing.

Q. And then SAP, that data was put into the 3D CAD model and then it produced a 2D forging drawing that TAE put its name on; is that correct?

A. That is likely to be the case. I did not --

Q. And then the finished drawing that TAE has, that's the same thing as the design drawing that Superior originally sent to TAE, correct?

A. Well, it describes the same part and the same part number.

Q. So it has to be.

A. Well, we can debate what the same means. But it

describes the same part number. So it has a lot of common information in it.

Q. And it has information that Superior sent to TAE originally in the form of Superior's 2-dimensional drawings?

A. Yes.

Q. Excuse me?

A. Yes.

Q. So when we're going from the forging to the finished part, there are two intermediate steps that TAE does. Would you read for me, please -- can you read the notes on 21.4?

A. 21.4?

Q. Yes, sir. Is it too small, or can you read it?

A. The blue notes?

Q. The notes over in the lower left-hand corner. Are they too small for you to read?

A. Yes, they are too small for me to read. Sorry for that.

Q. All right. I have a -- I think I have a --

MR. SIMON: Your Honor, they are in our witness notebooks, the exhibits that are in front of the witness, hard copies, if that helps.

Q. I don't know. I think I've blown these up. Let me see. On 21.4, that's a blow up, I believe, of the notes that are on 21.4.

THE COURT: Do you have a copy for the Court?
MR. ALEXANDER: I do, Your Honor. May I approach?
THE COURT: Please.
MR. ALEXANDER: I don't know how your German is.
THE COURT: Not very good.
MR. ALEXANDER: Kind of like mine.
Q. Will you please read note 12? Would you please translate note 12?
A. Yes, I can do so.
There should be no change to the sequence in manufacturing without prior consent from Superior.
Q. And do you see a particular dimension number 12 on that drawing that would limit that note?
A. Again, the copy I have is hard to read.
I don't see it at this point in time. I would have to go into the PDF and search for it.
Q. All right. Now, would you please read -- can you read note 3 on drawing 21? I don't know if that's in here, 21.5. It would be the last drawing, 21.4. Maybe not. I guess not. Hold on a second.
Let me give you my copy.
THE COURT: What are you looking at?
MR. ALEXANDER: I'm looking at what counsel

sent to me as 21.5, but that didn't make it into the power point. It is -- did you number them with decimals on 21 on the new stuff?

MR. SIMON: When we first scanned the exhibit, we inadvertently left our post-it notes on it. But we sent you another copy without the post-it notes.

MR. ALEXANDER: So this is your work product, in other words?

MR. SIMON: 21.1, 2, 3, 4 and 5, yeah, they were on there by mistake. You have a clean copy. And to answer your question specifically, we did not number them that way. And actually --

MR. ALEXANDER: So this would be part of Exhibit 21 and it's a TAE drawing. In the lower right-hand corner it says, SLF36700-F.

THE COURT: All right.

MR. ALEXANDER: That's what we're talking about.

Q. Now, can you read --

A. Thank you.

Q. You're welcome.

Can you read what note 3 on that TAE drawing says?

A. Changes to the manufacturing process, not without prior consent by Superior.

Q. Thank you.

A. Thank you.
Q. Now, these drawings here in 21 that had this manufacturing process, those are the ones that you said were a secret, kept secret from Superior and were proprietary TAE; is that right?
A. The intermediate manufacturing drawings?
Q. Let's find them in the power point.
A. Yep.
Q. I think those were in the power point. Look on page 22 and 23 of the power point.
A. Uh-huh. Yes, I do so.
Q. You're saying that those things would be kept in confidence from Superior, Superior wouldn't have access to those?
A. Yes, sir, it would.
Q. But Superior has to approve -- according to TAE's drawing, Superior has to approve any changes to the process; does it not?
A. I'm not certain about the remark that I saw on the finished part drawing.
Q. It's on TAE's drawing; is it not, those two things you just read?
A. It is on the drawing. I would have to look up what the meaning is and what it refers to.
Q. Superior has to know what the process is before it

can approve or disapprove of a change to that process; is that correct?

A. As a very general outline, that would probably be true.

Q. And Superior is responsible, again, to the Federal Aviation Administration and the public to make sure that that part is made correctly and made to the Superior design drawing; is that accurate?

A. Yes, that is.

Q. With the exception of the drawing, the drawing 22 and 23 in the power point, are there any TAE drawings that you talked about in the power point all the dimensions and tolerances and everything on them were the same as the Superior 2D drawing?

A. Can you repeat that question, please?

Q. That was really -- that question should be dragged out and shot. It was not very good. It was an inarticulate question. Do you know what that means? It means a bad question.

Do you remember when you were going through your power point --

A. Yes.

Q. -- with the Court and there was some TAE drawings in here, like page 17 is one, page 18, all of these drawings in here, are there any drawings other than the ones in 21 and

22 where you marked them that had dimensions or tolerances on them that aren't the same as the ones that are in the Superior 2D drawing?

A. Well, a lot of the presentation -- we have more examples of that, obviously. I don't know how much time everybody has to go through them.

Q. I'm sorry, not of the what?

A. Pardon?

Q. Not in the presentation?

A. Not in the presentation, yes.

Q. But you say you have others?

A. There are others, yes.

Q. Do you know how many others?

A. Well, we -- we focused our search on the most important parts in question; cylinder heads, cylinder start assemblies, connecting rod, crank shaft. So we have not reviewed all of the files on the drive.

Q. The answer is you don't know?

A. I don't know exactly. And I don't see why I should know that.

Q. Now, let me ask you this. On this drawing, 22, are you looking at that with me?

A. Yes, I do.

Q. 22 in the lowest right-hand corner.

A. Yes.

Q. The border is in blue and the numbers in white, 22.
A. Yes.
Q. That drawing has some dimensions that you say are not on the Superior drawings, but it also has dimensions that are on the Superior drawing, correct?
A. Yes.
Q. And the picture here that we're looking at, that picture came from the Superior 2D drawing; did it not?
A. I cannot say that. I didn't check similarity to a Superior drawing on this one.
Q. And would your testimony be the same with regard to the thing on 23 on the power point that has some dimensions, some process step finishing dimensions on it that are on the Superior drawing, but it has a lot of data and information that came from the Superior drawing?
A. Yes. There are dimensions that are not highlighted so they are the same as on the finished part drawing from SAP.
Q. And would your testimony be the same about the picture? You don't know where the picture came from. I think it came from the Superior drawing. Are you disagreeing with that?
A. I simply don't know.
Q. Doesn't every manufacturer have their own ways of doing little cuts, rough cuts and finish cuts on things that

come from forgings or castings?

A. Well, what meaning of the word manufacturer are you referring to? SAP --

Q. Somebody that would be a fabricator. Somebody that would be fabricating the kind of part that you've used as your example to show the Court about all this engineering work that TAE did.

A. Well, in this case, let's talk about TAE as being the manufacturer. Is that a fair assumption for this question?

Q. TAE -- no. I want to talk about other manufacturers. Doesn't anybody that makes a part from a casting or forging have procedures that they use to make rough cuts and finished cuts?

A. That's correct. Everybody has their own way of doing things.

Q. The parts that are -- the 48 parts that TAE manufactured for Superior, do you know whether or not TAE had had those parts manufactured by other fabricators before they came to TAE?

MR. SIMON: Your Honor, I just want to object to the reference to the 48 parts. Again, I don't believe that number is in evidence before the Court.

MR. ALEXANDER: It will be.

THE COURT: Very well. Sustained.

A. Okay. Now, you used the word TAE twice. Can it be that in the first time you meant SAP?

Q. Anything is possible when I'm asking a question.

A. Sorry.

Q. No, no, I'm sorry.

TAE -- before Superior had a relationship with TAE --

A. Yes.

Q. -- did Superior -- do you know whether or not Superior got the parts that TAE fabricated for Superior made someplace else?

A. I don't know that. But, yes, it's reasonable to assume that.

Q. And after Superior used TAE as the supplier for these whatever number of parts it was they made --

A. Yes.

Q. -- do you know whether or not Superior got those parts made by a fabricator someplace else?

A. I have no knowledge of that. But it would be fair to assume that somebody else is now producing and manufacturing these parts.

Q. And do you know whether or not either one of those fabricators before or after had to generate a 3D CAD model to make these parts?

A. I have no knowledge of that. I would assume they did, because it's a fair thing to do. As I explained, that

is a very cost efficient and also risk mitigating way of doing things.

Q. The -- but you're not -- it's not your testimony here that TAE came up with some novel way to make the parts that it made for Superior?

A. Well, it's no novel way to do 3D volume models. However, every manufacturer has their own way of doing things. And when you want to compete in that business, you have to offer a good prices for the pars. And this is where the manufacturing know how comes into play.

Q. Let's talk about your testimony about what was available in the overhaul manuals.

A. Yes.

Q. What was the date on that overhaul manual that you were looking at, the Superior overhaul manual?

A. The Superior overhaul manual, I think we looked at an overhaul manual from Teledyne Continental Motors.

Q. Okay. What was the date on that one?

A. I believe I saw the date 1976.

Q. 1976. So it's a long time ago, isn't it?

A. Yes, it is.

Q. Now, in overhaul manuals, what dimensions are displayed and talked about in overhaul manuals? Are they the actual dimensions, or are they things called wear dimensions?

A. Well, typically you will find dimensions that refer

to parts that have run in the engines. So if you characterize them as (indecipherable word) engines, then that would probably be the right word to use.

Q. So the dimensions that are in the overhaul manual are dimensions that say, Replace this part when it comes to these dimensions?

MR. SIMON: Your Honor, may I again ask that the witness be allowed to complete his answer. I don't think he had finished his answer before.

Q. Oh, had you not finished your answer?

A. I didn't finish my answer.

Q. Finish your answer, please.

A. I think in this particular overhaul manual, we found also dimensions for new parts. I explained that.

Q. But you found -- but the purpose of an overhaul manual is to tell the overhaul people when they should replace the part?

A. That's correct.

Q. And how to replace the part?

A. Or how to repair the part.

Q. Or how to repair it.

A. Yes.

Q. Can you see that?

A. Yes, I can see that.

Q. Is that something that you talked about before

about how many dimensions were in an overhaul manual?

A. Yes, I did.

Q. And what is that a picture of?

A. It is a representation from the overhaul manual. I believe what we've been before in this hearing today showing a cylinder start assembly, showing a number of fuse on that assembly. And what is highlighted in yellow color are dimensions that we found on the SAP drawings in exactly the same fashion.

Q. So how many dimensions did you find that matched the Superior drawing in this overhaul manual?

A. Probably around 11. This is the number that I count right now.

Q. And how many dimensions are there in this cylinder assembly total?

A. In this representation there are probably 20, 25 dimensions.

Q. So there are not enough dimensions on this to make a part?

A. That's not the conclusion. I think except for those dimensions that we found directly on the SAP 2D drawings, we find even more information that is readily available from this representation. Even those items that do not have a dimension to them, like the number of cooling rips you could obtain from that drawing. So, actually, it's a lot

more information contained in that representation from the overhaul manual that would help you in creating a drawing or a part of that thing.

Q. But you don't have all of the dimensions for the part in the overhaul manual?

A. Yes, that's correct. And this is what I pointed out before.

Q. And you're not trying to tell the Court that you can open up an overhaul manual and all of the dimensions you need to make for the cylinder head assembly or any part in the overhaul manual?

A. I never tried to explain that all of the information can be found from the overhaul manual. I just pointed out that the most important information covering air worthiness and interchangeability of the spare part, this is contained in the overhaul manual.

Q. What about the notes that are on the Superior drawings? Are the notes on the Superior drawings, are they contained in overhaul manuals?

A. What do you mean by notes?

Q. Things that we've been reading in the lower left-hand corner where there's a bunch of notes on a drawing. Here, I'll show you a drawing. As a matter of fact, I may have one in this one.

Here's one. This is called the cylinder assembly long

reach. Do you see that?

A. 47006-A1, yeah, that's one.

Q. The notes I'm talking about, are these things, all of these things right here.

A. On the upper left corner?

Q. Yes, sir.

A. Let me have a look. Assemble, install items normalized in mark in accordance with EO, engine order, or EO 56 or EO 249. So it references engineering orders. This is not part of what can be found typically in an overhaul manual.

Q. These notes, do they have things like the material that the part is supposed to be made out of?

THE COURT: Mr. Alexander, can I get you to stay at a microphone, please?

MR. ALEXANDER: Yes, Your Honor.

Q. And these notes, do they way what kind of material the part is supposed to be made out of?

A. Sometimes they do.

Q. Let's look at another drawing you talked about. Do you remember talking about that one in the court?

A. I believe so, yes.

Q. Okay. Why don't you come over here and stand by it and let's talk about it a minute.

THE WITNESS: Your Honor, may I step up?

THE COURT: You may, of course.
THE WITNESS: Thank you.
THE COURT: And, again, if I can get you to grab the microphone, so that we can make sure you're on the record.
MR. SIMON: Your Honor, may I ask that we just move the (inaudible word) so that I can see it?
THE COURT: You may.
MR. SIMON: Now the Court can't see it. That's more important.
THE COURT: Well, tilt it like that.
THE WITNESS: We can pull it up on the screen.
A. This one is -- oh, that's a different one. You picked SA-52006-A1.
Q. Are you the ones that put the markings on that drawing?
A. Yes. We did that. Which means myself and the people who work for me.
Q. And the point you were trying to make with the Court about that drawing was what?
A. Well, I explained that the --
MR. SIMON: Your Honor, if I may. I just want to make sure the record is clear on this.
THE COURT: Mr. Simon, we need you on a --
MR. SIMON: Sorry, Your Honor.

I want to make sure the record is clear about this. This is not a drawing. It was addressed on direct examination. But I do believe it is a document that was prepared by Professor Rienacker. I just want to be clear that this is a different drawing than we looked at earlier.

MR. ALEXANDER: I'm sorry. This is IA-16.36.

Q. And you put those markings on there, correct?

A. That's correct, yes.

Q. And the yellow ones indicate tolerances that you found in an engine manual?

A. That's correct.

Q. Go show the Court where those are, how many those are.

A. Starting here, there, this one, this one, this one, this one, this one and that's about it.

Q. And that's how many dimensions, ten?

A. One, two, three, four, five, six, seven.

Q. Seven dimensions. And how many total dimensions are on that drawing?

A. My estimation would be around 30. But let me look at this one here. 13 plus 19 is 32, 42, 47. That's the number of dimensions.

Q. Now, is that the -- are these more dimensions down here in the right, too?

A. This is something that we put on that is not

entirely correct. This is the correct assessment that we've made. And I have to apologize, again, this is plus/minus point 005. This is how it should read. There was an error on that one.

Q. So the box down on the right doesn't have -- doesn't have additional dimensions on it?

A. You mean this one?

Q. Uh-huh.

A. No, it doesn't.

Q. So there are 47 dimensions up there.

A. This is what we counted, yes.

Q. And you found how many in the overhaul manual?

A. About seven of them.

Q. Thank you.

A. You're welcome.

Q. And some of these things you have green. That's the color that you have on there. And it says that indicates dimensions and tolerances on the Superior drawing that are better than in the engine manual?

A. That's correct.

Q. So they're not the same?

A. They are not the same.

Q. And then there's some other blue over there that says, Indicates dimensions, tolerances which requires engineering effort.

A. Yes.
Q. And those weren't in the manual either?
A. They were not in the manual.
Q. Thank you. You can sit down.
A. Thank you very much.
Q. In summary, Mr. Rienacker, I'll ask you, again, the way this worked was Superior sent their 2D, 2-dimensional drawings to TAE under this supplier agreement and tAE made 3D CAD models from those drawings?
MR. SIMON: Your Honor, I object only to the reference to the supplier agreement. I don't believe Professor Rienacker has assessed whether or not the drawings were provided pursuant to any sort of supplier agreement or other agreement. He simply has done the engineering analysis.
THE COURT: Rephrase the question, please.
Q. All right. Let me just read you what you said in your -- look at your scope and background on your --
A. Yes.
Q. -- report.
All right. The first sentence under scope and background, I understand that Superior 2D drawings for various aircraft engine parts were supplied from Superior to TAE in an effort where TAE was asked to manufacture these parts for Superior, who would market them under a Federal

Aviation Administration parts manufacturer approval license.
Did I read that correctly?
A. Yes.
Q. And you agree with that statement?
A. I agree with that.
Q. And then I understand in addition that TAE created 3D CAD, computer aided design models, volume models from these drawings, converted dimensions from US to metric units, and derived 2D metric detailed drawings from the 3D models.
Have I read that correctly?
A. You did.
Q. Now, any other drawing, any other anything that TAE did, was based upon or derived from the Superior 2D drawings that came in originally, correct?
A. That was part of the basis. As I've pointed out before, there was some own engineering assessment and effort in it, manufacturing know how, and the like.
Q. I understand that. But all of the TAE drawings, have information that was supplied by Superior and data supplied by Superior initially to TAE in the Superior 2D drawings, correct?
A. Well, I was not part of that process at the time. But what you say has lightly (indecipherable word).
MR. ALEXANDER: I believe that's all we have at this time, Your Honor.

THE COURT: Very well.

MR. SIMON: May I, Your Honor?

THE COURT: Please.

MR. SIMON: Sir, let me get my work product. That's not fair, I shared mine with you.

One moment, Your Honor, to get a little bit organized here.

THE COURT: Of course.

MR. SIMON: Okay. May I proceed?

THE COURT: You may.

REDIRECT EXAMINATION

BY MR. SIMON:

Q. Professor Rienacker, at the beginning of the cross-examination you were asked some questions about tolerances for aviation engines, remember that, aircraft engines?

A. Yes, I do remember that.

Q. Do you have knowledge that you believe is pertinent to the tolerances that are required for aviation engines?

A. Oh, yes.

Q. Can you explain that to the Court, please?

A. Well, I've worked in gas turbines, gas turbine aircraft engines. And in these items that also fly at very high altitudes and fly under probably even more severe conditions, compared to the piston aircraft engines, they

have definitely a lot tighter tolerances to them on parts that are probably a lot harder to manufacturer and machine. So I wouldn't say it's specific to piston aircraft engines that they have loose tolerances. I would not think that's the case.

Q. Are there folks out there in the world who know more about aviation piston engines than you do?

A. Probably, yes.

Q. Okay. Would they even have an easier time than you did likely recreating the information that's on the Superior 2D drawings?

A. They certainly would.

Q. You were asked some questions by Mr. Alexander about whether or not there's a proprietary right stamp on the TAE drawings. Do you remember those questions?

A. That's correct.

Q. Whether or not there's a proprietary right stamp on those drawings, does that impact in any way your opinion that the TAE drawings are proprietary?

A. It does in no way impact my opinion.

Q. Now, you were asked a lot of questions about the notes, right?

A. Yes, I was.

Q. The notes on, I think it was 16.19, and then there were some notes on Exhibit IA-21, and I think, essentially,

what you were being asked was, if there's a note on a drawing that TAE has to follow Superior's manufacturing guidelines, unless it gets permission, what does that mean? Is that kind of what you understood the questions to be?

Let me ask a better question. If I understand your testimony in the case, it is that some of the manufacturing related information that TAE has was created by TAE, right?

A. Correct.

Q. And that's proprietary to TAE?

A. Correct.

Q. Was there other manufacturing information that was provided by Superior, engineering orders and things of that nature?

A. Well, there were engineering orders. Some of them have to do with assembly and other items, so you could call them partially manufacturing related.

Q. Okay. And might that be what is referenced in the notes is the actual information that Superior did provide?

A. That may be. I'm still puzzled about the note, because it's on a finished part drawing and the finished part drawing doesn't typically show manufacturing information. It shows the requirements for the finished parts.

Q. I understand. Do you have the binder with Exhibit IA-21 in front of you?

MR. SIMON: May I approach the witness, Your

Honor?

THE COURT: You may.

Q. Okay. Now, I think I may have mis-spoke earlier in your direct examination about how many pages were contained in Exhibit 21. I think I may have said, four. And I believe, in fact, there are six. And Mr. Alexander went through a couple of the additional ones with you.

Remember that?

A. Yes, I do.

Q. Okay. Let me ask you to look at pages 5 and 6 of Exhibit IA-21 and ask if you can identify those for us?

A. Unfortunately, I do not see the numbers 5 and 6 on them. But I believe you are referring to --

Q. They're not numbered, Professor. They're the last two pages of Exhibit --

A. The last two pages. Yes, they should be talking to the raw parts, the forging from which the connecting rods are fabricated.

Q. Okay. So these are the forging drawings that you were asked about?

A. That's correct.

Q. Okay. Is the information that you highlighted in red on the preceding pages of Exhibit 21 found on the forging drawings that are contained in the last two pages of Exhibit 21?

A. I don't think so. The forging drawings shows the dimensions from which the part is fabricated. So there will be differences between all the steps in the fabrication process. And that leads to different dimensions.

Q. Does it make any difference to your opinions, Professor Rienacker, whether or not the Superior notes are contained in the engine overhaul manual that we looked at?

A. No. It does not make any difference to my opinions.

Q. Why? Why not?

A. Well, the engineering notes refer to certain items like the material, the assembly or disassembly of certain items, how to inspect these parts with fluorescent penetrant inspection, and the like. Both of these processes are very common in the industry. And every company has specifications, they are typically called, that describe very similar processes and items compared to what I found in the engineering orders of SAP.

Q. Would it be very hard for a skilled engineer, especially one with even more experience than you have, sir, in designing these parts to recreate the data found in the SAP 2D drawings and other materials?

A. It wouldn't be any major problem. It would be fairly straightforward.

Q. Now, you were asked some questions about this

document that's marked IA-16.36 during your cross-examination. Do you remember that?

A. Yes, I remember that.

Q. That's another drawing, another Superior drawing that you analyzed in connection with your work on this case, right?

A. That's correct.

Q. And is your testimony regarding the colored aspects of that drawing the same as it is for the colored aspects of the 2D drawing you were discussing regarding opinion 5 earlier in your testimony today?

A. The conclusion is absolutely the same.

Q. And do the colors have the same meaning?

A. They have the same meaning. And I apologize. There are -- I found some errors here on that drawing. So that went wrong. My apologies.

Q. Okay. You did this same analysis for, what did you say, four parts?

A. Four parts, yes.

Q. And this is just another one of those analysis that you went through?

A. Yes.

MR. SIMON: Pass the witness, Your Honor.

THE COURT: Recross?

MR. ALEXANDER: No.

THE COURT: Thank you very much. You may step down, Professor.

THE WITNESS: Thank you very much, Your Honor.

MR. SIMON: Your Honor, the Insolvency Administrator rests.

THE COURT: Very well.

Rebuttal?

MR. ALEXANDER: Yes, Your Honor, we'll call Keith Chatten.

THE COURT: Mr. Chatten, if you'd come forward, please.

MR. SIMON: Your Honor, while that's taking place, may we take one minute just to rearrange the chairs here, if I could get some assistance? I'd like to have my expert come up and sit down here.

THE COURT: You may. But let's remember that we originally had 2 1/2 hours. You then called and asked for 4. And we're 14 minutes away from 4 hours. So quickly.

(The witness was sworn by the courtroom deputy.)

THE COURT: Please, Mr. Chatten, be seated.

(no omission)

KEITH CHATTEN

The witness, having been duly sworn to tell the truth, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. ALEXANDER:

Q. Please state your name.

A. Keith Chatten.

Q. Please state your title with Superior Air Parts.

A. Executive vice president and general manager.

Q. Are you the same Keith Chatten who testified earlier in this proceeding?

A. Yes, I am.

Q. Did you hear Dr. Rienacker's testimony?

A. Yes, I did.

Q. The engineering steps on the two forging drawings, are those common steps?

A. Yes, they are.

Q. Explain to the Court how Superior gets its connecting rods made now.

A. We supply the forging to a different supplier who's in a similar business to what TAE was to Superior. And they take that original forging drawing and the finished component drawing and they conduct the intermediate steps to meet the requirements on the drawing.

Q. And is that included in the piece parts price of

the connecting rods?

A. Yes, it is.

Q. And does that new supplier, did they have to make a 3D CAD model to do that?

MR. SIMON: Objection, Your Honor; lacks foundation.

THE COURT: Sustained.

Q. Do you know whether or not the supplier that presently makes those had to generate any 3D CAD models in order to do so?

A. I do know that.

Q. And what is the answer to that question?

MR. SIMON: Your Honor, I still think there's no foundation laid for this. He says he knows, but he hasn't explained why.

THE COURT: Sustained.

Q. How do you know that?

A. I have visited the supplier many times. I've -- I have a good relationship with the supplier. The supplier is a common supplier in the aviation industry. I have walked through the process with him on these parts. And there are no 3D models that they've created in this process.

Q. Thank you.

Do you recall my -- Dr. Rienacker's testimony about the notes on the TAE drawings that said, No changes could be made

in the process without Superior's approval?

A. Yes, I do recall that.

Q. Are those -- were those general notes?

A. Yes. They are what we refer to as general notes.

Q. Okay. Please tell the Court what a general note is.

A. On the drawing, you can see the -- there are two types of notes. There's one note that has no flags on the drawing. For example, we can see on the drawing across from us that there are a few triangles facing left. And then the rest of the notes have no triangles. The ones with the triangles facing left are very specific notes which we refer to as flag notes, which show these flags on the drawings that Mr. Rienacker was searching for. The rest of the notes that aren't flagged are general notes and apply to everything on the drawing.

Q. And is that general note that no change can be made in the manufacturing process without the prior consent of Superior standards on Superior's drawings?

A. Yes, it is.

Q. And is that the normal course, because the FAA requires Superior Air Parts to be in charge of every step in the manufacturing process?

A. Yes.

MR. SIMON: Objection, Your Honor. I need to

object. There's been no foundation laid. This witness is not an expert. There's been no foundation laid that he has any detailed knowledge of the FAA requirements.

Q. Mr. Chatten, as a regular part of your business at Superior Air Parts, do you interface with the Federal Aviation Administration?

A. Yes, I do so. And I have done so for the last 17 years.

Q. And that was before you were at Superior when you worked somewhere else?

A. Yes, it has.

Q. And does the Federal -- what are the Federal Aviation's requirements with regard to Superior and the manufacturing process that a supplier would do?

A. Superior has the responsibility to the FAA and to the public to make sure that every step in the manufacturing process is controlled to ensure the safety of the component.

Q. The steps in the manufacturing processes that the supplier does, are they withheld from Superior or secret from Superior?

A. No, they're not. By our quality manual and by FAA regulations, they're required to be shared with Superior.

Q. And Superior undergoes Federal Aviation Administration quality control audits?

A. Yes, we do.

Q. And part of those audits is you have to know how the parts are made?

A. Yes. They -- Superior undergoes these audits on a very regular basis. And the FAA ensures that the control of the process is being maintained.

Q. Let me show you -- here's a blow up of the drawing that Dr. Rienacker testified about, 16.1947030 and it has these flags on it. Do you see that?

A. Yes, I do.

Q. And those flags ask someone to measure there; is that correct?

A. Yes.

Q. What they're measuring, though, are Superior dimensions?

A. That is correct.

Q. And those are dimensions that came from the original Superior 2D drawing?

A. Yes. Every single dimension.

Q. And let me show you something else. This is a blow up of Exhibit 63.

Can you tell the Court what that is?

A. Yes. It's a record of measurement for a first article inspection record.

Q. And that has a lot of numbers down in the left-hand column, 55 of them. Do those comport with measuring points

on drawings?

A. Yes. They help identify which dimension on the drawing that you're specifically measuring. This is common practice. And it's done so that it basically provides a map for the quality records to be able to refer back to the drawing to verify which dimension you are discussing.

Q. And Exhibit 63 is an example of that?

A. Yes, it is.

Q. And that came from TAE?

A. This came from the quality records that both TAE and Superior Air Parts have maintained.

Q. And you can testify that this is part of the Superior quality control records that the FAA requires Superior to maintain?

MR. SIMON: Your Honor, I object to the leading.

THE COURT: Sustained.

Q. What is this?

A. This is a quality record that we are required to maintain, which is normal for every component that Superior Air Parts produces.

MR. ALEXANDER: We'd move to admit Exhibit 63.

THE COURT: Any objection?

MR. SIMON: Your Honor, I'm confused about the source of this document. Are they saying this is a Superior

document or a TAE document?

Q. Mr. Chatten, who generated this document?

A. This document was generated by TAE for Superior Air Parts as part of the quality requirements for the component.

Q. And it was generated under Superior's direction and control?

A. Yes.

Q. And it's part of the Superior quality control records for that part presently at Superior Air Parts?

A. Yes, it is. And a duplicate copy lies in the quality records that TAE maintains.

MR. ALEXANDER: Move to re-admit Exhibit 63.

MR. SIMON: No objection.

THE COURT: It's admitted.

Q. Let's go back to this drawing with all of these flags on it. We're looking at IA-16.19.

Do you care if TAE keeps its flags?

A. No.

Q. Do they have any value to Superior?

A. The flags have no value.

Q. Would they have any value to another manufacturer for that part for Superior?

MR. SIMON: Your Honor, I object. I object to this line of questioning. It appears as though he's asking the witness for expert testimony that he's not qualified to

give.

THE COURT: Sustained.

Q. Back to my original question. What does -- from this drawing, what would Superior want back?

A. All of the dimensions and data that come from the Superior Air Parts drawings.

Q. The data, the dimensions, the tolerances, and the notes?

A. Yeah. I consider that part of the data.

Q. And the notes that came from the original Superior drawing. If TAE wanted to keep its flags, it could keep its flags as long as no one could get Superior's data out of it, right?

A. Correct.

Q. Thank you.

MR. ALEXANDER: Pass the witness.

THE COURT: Cross?

MR. SIMON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SIMON:

Q. Mr. Chatten, is there any dispute here about whether or not both Superior and TAE created some manufacturing related documents?

A. No. There are manufacturing related documents such as these flags that we see that were created by TAE.

Q. And Superior sent some manufacturing related information to TAE, correct?

A. Yeah. Superior sent all of the information required to make the part to TAE.

Q. All right. Did TAE drawings, the drawings that actually say TAE on the bottom of them, the ones that this motion to enforce, at least originally was designed to have provided to Superior, is it your testimony that Superior has all of those? That they were already shared with Superior?

A. I'm not sure I understand your question.

Q. You have the TAE documents in your possession at Superior. The answer is no, isn't it, sir?

A. No. The answer is, yes, we have some of these drawings.

Q. A lot of them you don't, right?

A. I don't know the number. I have not counted how many. But a substantial number of these drawings have been shared with Superior Air Parts by TAE during the course of the making of these parts.

Q. For example, documents related to the final quality test, and so forth, that Superior might have to comply with the FAA regulations, right?

A. As well as the documents involved in the manufacturing process, yes.

Q. It's not your testimony, is it, that all of the

manufacturing related documents were shared by TAE, is it, sir?

First of all, let's back up. You weren't at Superior when this relationship was ongoing, were you?

A. No. I was at Continental Motors at the time.

Q. That's what I thought.

And it's not your testimony, again, that all of the information Superior is asking to have supplied to it, pursuant to the confirmation order, is already in Superior's possession, is it, sir?

A. I don't know exactly how much. But a majority of that information is in Superior's possession.

Q. You've gone through and searched and compared the documents on the TAE server to Superior's own records and you can make that determination?

A. Yes.

Q. There is additional information with TAE's name on it manufacturing related that Superior doesn't have, though, correct?

A. That is correct.

MR. SIMON: No further questions.

MR. ALEXANDER: A few questions. I forgot to ask these before.

(no omission)

REDIRECT EXAMINATION

BY MR. ALEXANDER:

Q. How many parts did Superior send drawings for to TAE?

MR. SIMON: Your Honor, we are -- we're going beyond the scope of cross here.

MR. ALEXANDER: We are. And I said, I forgot to ask two questions.

May I ask them?

THE COURT: You may. I'll allow it.

MR. ALEXANDER: Thank you, Your Honor.

Q. How many parts did Superior send drawings for to TAE?

A. Approximately 360.

Q. And how many parts did TAE actually ever manufacture for Superior?

A. 48.

Q. Thank you.

MR. SIMON: Nothing further, Your Honor.

THE COURT: Thank you. You may step down.

THE WITNESS: Thank you.

MR. ALEXANDER: We'll call Mr. Marwill.

THE COURT: Well, maybe you'll call Mr. Marwill.

How much time are you going to need with Mr. Marwill?

MR. ALEXANDER: Am I going to need? I'm going to need 7 1/2 minutes, or less.

THE COURT: Well, where are we in the process? We're now at exactly four hours. But we have -- we've had no closing arguments.

MR. ALEXANDER: We have not.

THE COURT: And today was supposed to be four hours to be finite. And here we are, yet, again. How much further cross would you expect to have, Mr. Marwill?

MR. SIMON: I don't know, obviously, what they're planning to cover. But if the direct is 7 minutes, I would be surprised if my cross is more than 5 minutes.

THE COURT: All right. Let's get it done.

Mr. Marwill, please.

(The witness was sworn by the courtroom deputy.)

DOUGLAS MARWILL

The witness, having been duly sworn to tell the truth, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. ALEXANDER:

Q. Mr. Marwill, you're the same Douglas Marwill that testified earlier in this case?

A. Yes, I am.

Q. Did you hear Dr. Rienacker's testimony about it would be easy to reverse engineer these parts?

A. Yes, I did.
Q. Do you agree with that?
A. No, I definitely do not.
MR. SIMON: Your Honor, two objections. One, Professor Rienacker did not testify about any reverse engineering at all. And, number two, this line of questioning, I believe, will go beyond the scope of our case. And -- well, I'll leave it at that for right now.
MR. ALEXANDER: Your Honor, I heard him testify that with the things that he got from the overhaul manual and for other things, he could generate a drawing by figuring other things out. That's reverse engineering.
MR. SIMON: Disagree that that's reverse engineering, Your Honor. That's an engineering analysis. That's not reverse engineering.
MR. ALEXANDER: Okay. Here's what we'll do. We will ask him questions that were absolutely asked (inaudible statement due to not speaking near a microphone.) I'm going to hurry because we need to.
Q. Mr. Marwill, I'm going to put Superior's Exhibit 64 up on this easel and I'm going to ask you if you can identify that?
A. Yes, I can.
Q. What is it?
A. This is a page from the overhaul manual that I

marked up with yellow magic marker to indicate dimensions that I had found on the engineering drawings.

Q. And those were the dimensions that were available from the overhaul manual?

A. Yes.

Q. Would you please step up here, if it's all right with the Court, and explain to the Court what this aircraft part is we've placed here and about how those dimensions relate to it?

A. Yes, I will.

THE COURT: Please.

Is there a question, Mr. Alexander?

Q. Mr. Marwill, what are these dimensions for?

A. All right. This is a page from -- it's A-10-5 that I took from the overhaul manual. And I've highlighted the dimensions in yellow that I could find that matched the engineering drawing. Now, the engineering drawing had about 273 different dimensions on it, because this is two parts. We have a head, which is this part up here, the light gray. This part down here is called the barrel. And that's the black part. So these are two separate drawings, two different detailed parts and they come together on this drawing right here. But when you look at an overhaul manual, it's only showing you dimensions that are used for overhaul purposes. For example, the most important thing is, what do

you make the head out of? What do you make the barrel out of? Those materials are called out on the face of the drawings. They are not shown in the overhaul manual, because nobody in the field is authorized by the FAA to make parts, except somebody who holds a license from the FAA like Superior.

Q. Okay. Let me see if I can find a drawing, an entire drawing for that part. I think you marked one of those; did you not?

A. Yes, I did.

Q. I'm going to place on the easel this drawing, which is the entire -- what is that?

A. All right. This is the drawing that looks similar to the overhaul manual. This is the assembly part where the head and the barrel are mated together. And on this drawing, you can see different dimensions that are highlighted in yellow. And, again, these highlighted areas correspond to these dimensions on here. But what's most important is we have quite a few more dimensions on this similar drawing. And if you look at the detailed part of the barrel and of the head, total together is about 270 or more dimensions to make those two parts. So there's -- it is no way possible to create this assembly and make these parts using the information in the overhaul manual.

Q. Have a seat. Thank you, Mr. Marwill.

Mr. Marwill, I believe you testified earlier that in your opinion, the TAE drawings were copies of the Superior drawings. Did anything you see in today's testimony change that opinion?

A. No. It's very obvious that the dimensions are in the same place. The notes are very similar. Even some of the notes read exactly the same, as they should.

Q. And you say, as they should, and why is that?

A. Because the drawings were made by Superior. They were then FAA approved. And that means starting at that point there can be no further changes, unless each change receives FAA approval. And so, therefore, Superior is expecting their vendors, in this case TAE, to make the part exactly the way their drawing shows where there's no deviations whatsoever.

MR. ALEXANDER: Pass the witness.

THE COURT: Mr. Simon.

Pretty much.

MR. SIMON: Pardon me?

THE COURT: Nothing. He asked if me if that was 7 1/2 minutes.

MR. SIMON: I'll be less than my 5.

CROSS-EXAMINATION

BY MR. SIMON:

Q. Mr. Marwill, the engine overhaul manual that

Professor Rienacker talked about contained new part dimensions in it, didn't it?

A. It did. There were about four to five dimensions.

Q. That were showed on the screen, correct?

A. That's correct.

Q. There were many more in the manual that we didn't show on the screen, correct?

A. That's true.

Q. And I want to make sure I understand your testimony here today about re-creating these drawings. Your testimony in your deposition was that you had not assessed the level of any effort that would be required to reverse engineer any of the parts.

Is that still true?

A. Would you repeat that again, please?

Q. Yeah. You told me during your deposition that you had not assessed the level of effort necessary to reverse engineer any of the parts at issue in the case, right?

A. Yes. I believe you said before that is how many man hours did I think it would take and I said I had not evaluated that.

Q. No. Your testimony -- are you denying, sir, that you testified that you had not assessed the level of any effort that would be required to reverse engineer any of the parts at issue in the case?

A. No. I disagreed with you. But then I said, just prior to that, you asked me how many man hours I thought would be involved and I said I had not assessed that.

Q. You had not assessed the level of effort that would be required, correct, sir?

A. That's right. One of my jobs is to create estimates on what it takes in man hours to do a particular job, design a part, or manufacture a part. And I have not evaluated that.

Q. Okay.

MR. SIMON: Pass the witness, Your Honor.

THE COURT: Any redirect?

MR. ALEXANDER: No, Your Honor.

THE COURT: Very well. Thank you, Mr. Marwill.

THE WITNESS: You're welcome.

THE COURT: Any other rebuttal witnesses?

MR. ALEXANDER: No, Your Honor.

THE COURT: So does the movant rest and close?

MR. ALEXANDER: The movant rests and closes.

THE COURT: And does the Insolvency Administrator close the evidence, as well?

MR. SIMON: Yes, Your Honor, we do.

THE COURT: Very well. Good.

All right. Let's talk about where we are in closing

arguments briefly. We're going to come back and do this after lunch. I had hoped, when you asked for additional time, we started earlier than we originally were planning to and planning to go through to 1:00 in order to get this finished. Obviously we haven't gotten it finished, because we still haven't done closing arguments. But we have to get this finished today. And so I will -- I don't really have additional time to give you today, because I leave town tomorrow for the rest of the week. So, no offense, my day was pretty much planned around this and now that's being disrupted. But we have to finish this, because I have my current law clerk for four more days. For all of the reasons that I said to you all at the last hearing as to why this was tedious and difficult because of the inaccurate time estimate that only continues to be problematic.

So I'm going to tell you, now that the evidence is concluded and closed, some concerns I've got. And you can think about that over our lunch recess and talk to me about that during closing arguments.

I have significant concerns about my jurisdiction to hear this dispute. And let me tell you why I have those concerns. This has morphed into something well beyond the initial pleading. The initial pleading was TAE has our property, we want it back under the terms of the plan, albeit four years after the fact under the terms of the plan. The

Insolvency Administrator -- and you'll recall that from the very beginning I've said, You all are just ships passing in the night. Superior is asking for property back. The Insolvency Administrator says, What do you think I have that you want? I'm happy to give you your property back, but I don't know what you're asking me for. And, frankly, I'm not going to go through the tortured history here of months passing and the ships continuing to pass in the night. And, finally, Superior sends somebody to Germany to go through the files that the Insolvency Administrator continues to have and we start this hearing.

The Insolvency Administrator has agreed that anything that is a Superior drawing he will give back. And that, yes, you found some Superior drawings in the documents that he had segregated and that he's happy to give those back. Now this has morphed into documents created by TAE with data from Superior, at least in part, are now what you either want back or apparently you want me to direct that the Insolvency Administrator has to destroy. That's a mandatory type of injunction. One, this isn't an adversary proceeding. Two, this is a motion to enforce the terms of a, frankly, very old plan of reorganization in this case. That caused me to really re-focus. Because, again, the relief requested has morphed well beyond, Give me my documents back to make them destroy their documents, because it has my information in it.

The plan doesn't say that. The plan doesn't come close to saying that.

Post-confirmation jurisdiction in a bankruptcy court is dramatically narrower than pre-confirmation jurisdiction. As I've analyzed this, frankly, all throughout the weekend, there are three kinds of bankruptcy jurisdiction; arising in, arising under, and related to. This is not arising in or arising under. The bankruptcy estate has been fully administered, frankly, years ago. We closed the case in 2010 based upon the representation of the Trustee of the Creditor's Trust that all monies under the plan had been distributed. So this plan was fully implemented, fully consummated, and, frankly, completely concluded back in 2010.

2013, years later, Superior comes running in and asks for the case to be reopened, not for this dispute, but so that it could remove an adversary -- well, remove a lawsuit that had been filed against Superior in state court to the bankruptcy court, because you felt like that was a claim that had been discharged in connection with the plan. I don't like reopening bankruptcy cases years later because, frankly, usually they're a stretch as to jurisdiction. But I was persuaded that with respect to that lawsuit, that while it could have been adjudicated in state court, it made some sense that the Court that had confirmed the plan and was aware of the saga that Superior had gone through to get to

plan confirmation, that this Court decide that dispute. So I did. Reluctantly, I did. And I granted Superior's motion to dismiss that lawsuit, because I agreed with you, this was a claim that was discharged by the plan.

Normally I would re-close the bankruptcy case. This case is done. It's been done for years. But the other party to the adversary, the plaintiff in that adversary proceeding appealed my decision granting the motion to dismiss to the District Court. So I kept this bankruptcy case open, while the issue went up on appeal. I got affirmed by the District Court and then a further appeal was filed to the 5th Circuit. And in July of this year, I've come to figure out by looking at the various dockets the 5th Circuit dismissed the appeal on motion of the plaintiff. So that appeal is gone.

While the bankruptcy just happened to remain open to accommodate the appeal of the adversary proceeding that prompted the reopening of the case, or the lawsuit that prompted the reopening of the case, Superior gets the bright idea to file the motion to show cause. Again, it was just fortuitous that the case remained open to accommodate the appeal from the lawsuit. So the show cause motion is filed and then, frankly, you all basically agreed to toll that among yourself, but don't bother to tell the Court about it. So I dismiss the motion to show cause for want of prosecution late last year because, frankly, nothing had been happening

on the motion to show cause and we don't let things just linger in this court. And the next day the motion to enforce got filed, where you explained that you were really sorry, but, you tolled this by agreement with the Insolvency Administrator and you really wanted to, quote, enforce the confirmation order and plan.

But, gentlemen, Superior post-confirmation elected to resume business with TAE, right? Your own motion. I went back and re-read everything. Your own motion tells me that. So post-confirmation with Superior under new management, i.e., new owners at least, I think some of the old management remained in place. But under new owners, Superior went back and decided to resume a relationship with TAE. But you'd rejected the pre-petition supplier agreement under the terms of the plan. That agreement was never assumed by Superior. Under the terms of the plan, it got rejected. And, again, this is all work that we've done in preparing in the interim for this continued hearing, because none of this is mentioned by the Insolvency Administrator, other than to lament that it had been years in the preliminary response filed some time ago.

So I don't know what the basis on this record of you resuming your relationship with TAE was. But it wasn't the pre-petition supplier agreement, I'm guessing, because that was rejected under the terms of the confirmed, consummated,

fully implemented plan. And then years of continuing to do business post-confirmation, new owner in place, you decide, according to your motion for, quote, competitive reasons, to quit buying from TAE. And then, and only then do you demand Superior's documents back, quote, pursuant to the plan and confirmation order. This is not a pursuant to the plan and confirmation order. This is a business relationship that the new owner of Superior made the decision to enter into. And now that there is a post-confirmation new order fuss between reorganized Superior and its supplier, who happened to be a pre-petition supplier but this doesn't have anything to do with the pre-petition supplier relationship. This is a new relationship, at least as far as a Bankruptcy Court would look at it. This doesn't have anything to do with implementation or execution of the plan. This has to do with a post-confirmation business dispute between reorganized Superior and one of its suppliers, period, paragraph.

And the 5th Circuit has made it abundantly clear, starting in Craig Stores followed by U.S. Brass, that post-confirmation related to jurisdiction is very narrow. It has to relate to the execution or implementation of the plan. That plan got implemented years and years ago. If you wanted these documents back as part of the implementation of the plan, Superior could have asked for them back, you know, a month, two months, six months, some reasonable time after the

plan was fully enforceable, had gone effective. But you didn't. And you didn't because you decided under new owners that you wanted to resume a relationship with TAE. So, fine, you did. That's great. But why is this fuss in my court? Because this doesn't have anything to do with the plan. So I've got to tell you, I don't think I have jurisdiction to resolve this dispute. I've given that a lot of thought. And since I must always, as any Federal Court does, evaluate my subject matter jurisdiction, my first question to all of you is, how in the world do I have jurisdiction over this?

And, you know, I understand that you've -- and I mean this sincerely, you've cleverly styled this as a motion to enforce the terms of a plan. But what that clever designation overlooks is the fact that, you know, this is years after implementation of the plan. And this is after reorganized Superior elected to do business with TAE. And, quite frankly, had you gotten the drawings back post-confirmation promptly, you would have turned around and given them back to them, because they needed them to resume manufacturing these parts for you. So that just proves to me, gentlemen, that this isn't -- hasn't got anything to do with the plan. And this has got something to do with forum shopping, to come back to the bankruptcy court because you thought you had a hook to do that. And I'm not suggesting any merits at all here. Interesting fuss. It's been

fascinating to hear about. But at the moment, I'm purely focused on, I think you came to the wrong Court and I don't think I can resolve this dispute. So that's the first issue that when we come back after lunch, you all are going to have to address with me is how in the world do I have jurisdiction over this.

And we're going to do this a little choppily. Because today is the last day this week that I am here, I have plans with my staff to go to lunch, because this is the last opportunity that I will have to go to lunch with my exiting law clerk. So we're going to come back in an hour and 15 minutes, which is shorter than what I had hoped to take with him. But it's about all I can do, because of other commitments the rest of the afternoon. So come back here at a quarter of 3. And I have a short matter at 3:00. If they're here early, I'll take that early, because I don't think it will take long. But if they're not here, we'll start this and then we'll have to take a short recess so I can take that matter off. And then I'll tell you, I have a conference call that got arranged specifically this morning to accommodate me at 4:00. So I can't ask that that call be moved. So we're only going to have a window of time for argument, unless I come back out after that call, which we'll see where we are. But at the moment, think short. But the first issue that we've got to address is subject matter

jurisdiction. Because if I am unpersuaded that I have subject matter jurisdiction, nothing else matters.

MR. ALEXANDER: Your Honor, may we leave everything where it is?

THE COURT: You may.

All right. We'll see you back here in an hour and 15 minutes.

MR. SIMON: Thank you, Your Honor.

(Lunch recess ensued.)

THE COURT: Be seated, please. Please, counsel.

MR. ROBISON: Good afternoon, Your Honor. Are we going to take appearances, again?

THE COURT: I don't think that's necessary, but, thank you.

MR. ROBISON: May I approach with a copy of my power point presentation?

THE COURT: You may.

Thank you.

MR. ROBISON: Good afternoon, Your Honor. Chris Robison on behalf of Superior Air Parts. How would the Court like to do closing? Would you like me to do my full closing now, or try to reserve some time? As far as time estimates go, when I ran through it this morning, it took just under 20 minutes. I suspect because of the

jurisdictional inquiries that the Court raised, that will necessitate a little bit of additional time. But if I could have a minute or two after Mr. Simon is done, I would like the last word, if the Court's schedule allows.

THE COURT: You may.

MR. ROBISON: Your Honor, I'll address the jurisdictional inquiries that the Court raised first, since that's what the Court requested. And I apologize. This was not in my power point.

THE COURT: Didn't expect it to be.

MR. ROBISON: Because I didn't anticipate it coming up.

I have looked at this issue before. And the way I analyzed it when I looked at it -- and I guess let me make one thing clear first. We're not asking for an injunction. We're not asking that you order that TAE destroy anything. We're not asking for anything that goes beyond the language in the confirmation order, which is the word return. I know there may have been some testimony from Superior --

THE COURT: But how do you return information that's in a different document?

MR. ROBISON: You give it back to its rightful owner.

THE COURT: Well, but you didn't prove to me that you owned it. You may own the information, but there's

no evidence in the record that you own the TAE created documents.

MR. ROBISON: And I think there is a distinction between information and documents. And I think that's where intellectual property law comes into play. And I'll get to that in my ordinary power point. But the way I've always analyzed the jurisdictional question was really by looking at the Supreme Court's opinion in the Travelers case, Travelers versus Bailey. And I'm sure the Court's familiar with it. It's a 2007 case that arose out of the Manville bankruptcy. And in that bankruptcy in 1986, the Bankruptcy Court entered an order enjoining certain claims against Travelers Insurance Company, which was a non-debtor, because Travelers made a substantial contribution to the plan in that case that went to pay victims of asbestos. Many years later, more than ten, a group of plaintiffs' lawyers thought they had figured out a way around the Bankruptcy Court's order. And they attempted to sue Travelers in state court. Travelers, again a non-debtor, went back to the Bankruptcy Court and asked for relief. And the Bankruptcy Court entered what are referred to in the Supreme Court's opinion as clarifying orders, clarifying the prior confirmation order.

That issue went up on appeal and the Intermediate Court, I think it was the 2nd Circuit, but I could be wrong

on that.

THE COURT: No, it would have been. It was.

MR. ROBISON: Reached the conclusion, again, as I'm sure the Court is aware, that the Bankruptcy Court in the original 1986 order did not have subject matter jurisdiction to enjoin these third-party claims against a non-debtor. And, therefore, reversed the Bankruptcy Court's entry of the clarifying orders. And that goes up to the Supreme Court. And the Supreme Court frames the issue as whether or not the Bankruptcy Court had subject matter jurisdiction to enter the clarifying order. And what the opinion says is the answer here is easy. As the 2nd Circuit recognized, the respondents -- and the respondents do not dispute, the Bankruptcy Court plainly had jurisdiction to interpret an enforce its own prior orders. And I guess that's how I've always looked at this dispute, as interpreting and enforcing paragraph 37 of the confirmation order.

THE COURT: No, but you go way beyond that, counsel. And I figured that's what you were going to say. But you go way beyond that here.

What the confirmation order says is that what you owned is supposed to be returned to you. Unless I conclude that you own the TAE 3D models and the TAE drawings, you don't get it back under the confirmation order. Moreover, none of that

relates to the points that I made this morning, which is if you wanted this stuff back, then you could have asked for it back years ago. And what we have here is the intervening business decision of Superior under new ownership to resume a relationship with TAE. So this doesn't have anything to do with enforcing the plan. You're dressing it up trying to make it seem like enforcing the plan. But this is really an unfair business practice, intellectual property, some sort of dispute that arises out of a post-confirmation business relationship between two non-debtor parties. And that's exactly the kind of dispute that was at issue in the Craig Store case from the 5th Circuit. And the 5th Circuit made painfully clear that the Court just didn't have jurisdiction.

You know, you're supposed to leave the bankruptcy court, once the plan has been confirmed and fully implemented. And if you have a business dispute between a post-petition supplier, which is what this is, post-confirmation supplier, you don't come back to the bankruptcy court for that. I'm a Specialty Court. I presided over the reorganization of the debtor. And now if you've got a post-confirmation fuss with one of your post-confirmation suppliers, go to a Court of competent jurisdiction to hear that. But that's not a Bankruptcy Court with jurisdiction under 28 USC 1334.

MR. ROBISON: And I sense I'm fighting an

uphill battle here, Your Honor. But let me at least make two points.

THE COURT: Please.

MR. ROBISON: And just try.

I did go back and look at the transcript over the lunch hour. And I think the testimony was that the information that was provided to TAE was all provided pre-bankruptcy.

THE COURT: I'm sure that's right.

MR. ROBISON: And I also just wanted to --

THE COURT: And, frankly -- but if you had gotten it back under the plan, as the plan permitted you to, you would have given it back to them. Because, apparently, they needed it to manufacture your products.

MR. ROBISON: Well, and I think -- I'm speculating here. We both are.

THE COURT: And so am I. But that makes logical sense to me.

MR. ROBISON: But, I guess the way I would --

THE COURT: If they needed it initially, they would have needed it again.

MR. ROBISON: And I think the way I would see that is if that had happened, we would probably be having this same conversation, albeit at a time before now. I think the response from the Insolvency Administrator likely would have been the same.

THE COURT: I don't know what it would have been.

MR. ROBISON: But, again, we're both speculating.

THE COURT: But it would have certainly been before you made the business decision to re-enter into a relationship with TAE, right?

MR. ROBISON: I'm not sure, Your Honor. Because I think the testimony was that the relationship basically continued throughout the reorganization process.

THE COURT: Well, there is no testimony about that. And the words you used in your motion was you resumed post-confirmation. I don't know if TAE was manufacturing parts for Superior during the bankruptcy. That would be inconsistent with my recollection of the case. But, again, there's no evidence as to whether Superior continued operating during the bankruptcy case itself. I just honestly don't know.

MR. ROBISON: And the other thing I wanted -- in addition to the evidence in the record about when the information was provided, I wanted to draw the Court's attention to the second sentence of paragraph 37 of the confirmation order which I'm not sure I focused on in my opening, or anybody focused on. But it does provide that for the avoidance of doubt, the reorganized debtor, which is --

THE COURT: No, I understand.

MR. ROBISON: -- who I think we all agree is who's here today, retains all of the debtor's rights pursuant to any confidentiality agreement executed in connection with the exchange of such information.

THE COURT: Well, but the problem is, counsel, what does that mean? You rejected -- Superior, you, you didn't, but Superior rejected the pre-petition supplier agreement. So what's the affect of that pre-petition -- the pre-confirmation rejection of that agreement on that sentence?

MR. ROBISON: Your Honor, I haven't analyzed that issue. And the reason is, is because I think both parties in this case have taken the position that the supplier agreement never terminated.

THE COURT: Well, and that may be true. Rejection is not termination under the Bankruptcy Code. So I take it, it's your position that you continued doing business under the pre-petition agreement that was rejected in the bankruptcy case?

MR. ROBISON: I think that was the testimony from Mr. Abercrombie, that the parties always did business pursuant to the supplier agreement. And whether that means it rode through or was rejected and then somehow started over, I haven't analyzed that issue. But to me, the second

sentence of paragraph 37 --

THE COURT: Well, but ride through doesn't work. And there's a specific plan provision that says, Anything not specifically assumed is rejected. So upon confirmation, the 2005 amendments eliminated ride through as an option to the Bankruptcy Code. And so even if it hadn't have, we have a specific plan provision here that says, Anything not assumed, is rejected. And at least we couldn't find anything on the docket that said the supplier agreement got assumed. So by virtue of confirmation, that means that it got rejected.

MR. ROBISON: And, I guess, let me try it a different way and see if maybe this helps. When I read this paragraph 37, that second sentence has to mean something. TAE is mentioned in the first sentence.

THE COURT: Well, maybe it means something. I don't know what it means.

MR. ROBISON: And I guess what I would submit that it means is that if Superior had a confidentiality agreement with any of the parties in the first sentence, that the reorganized debtor retains all of the debtor's rights pursuant to that confidentiality agreement.

THE COURT: But what rights did it have? If the agreement was rejected, what rights remained? And that's a query. I don't know the answer to that.

MR. ROBISON: And I can't stand here and represent to the Court, but I've analyzed that issue. I think there are cases -- and I'm just going on recollection here, Your Honor, but I think there are cases that say that confidentiality provisions survive determination of the contract. So to the extent that rejection would equate with a termination --

THE COURT: But I'm not sure that there is such a provision in this agreement. I've looked for that and couldn't find one.

MR. ROBISON: And I don't know if that's by agreement or common law.

Your Honor, further on the jurisdictional issue. Again, I've always analyzed it under Travelers. And if the Court is not seeing it that way, not seeing it as a motion --

THE COURT: Well, I agree with you. The Court always has jurisdiction to enforce its own order. But I think you're going well beyond enforcing the order. And I'm not sure that that argument or analysis addresses the post-confirmation business relationship that now is really the focal point of this fuss. I mean, the bankruptcy case is long concluded. And, frankly, there's a host of Courts that would have jurisdiction over this dispute. Whether -- I mean, if you're right that the supplier agreement controls, which is part of your argument before me, and that supplier

agreement remained in effect, notwithstanding its rejection because rejection is not termination, but rejection is breach, but if the parties elected then to continue on under that agreement and you have a right to this information back under that agreement, so go get it in some other court and enforce the terms of the supplier agreement. If this is an unfair business practice case and you want injunctive relief or money damages for mis-use of your proprietary information, you know, go get it. I physically do not know how you give back information that is contained in another document.

MR. ROBISON: Well, I guess --

THE COURT: And at least nobody has cited us to a single case that addresses that and that's exactly the kind of thing I asked you all to address in what I'll refer to as the gap period.

MR. ROBISON: And what I've struggled with on that issue, Your Honor, is if they had made copies, just Xeroxed copies of the original Superior drawing, they could make the same argument. And under their argument, it comes out the same way, Well, we made these copies. They're our copies.

THE COURT: No, that's different. If they physically just copied your's, then you wouldn't buy that, because that was still your document. They didn't add anything to it. They just ran it through a photocopy

machine. So I see that, at least, differently.

MR. ROBISON: Let me make one more point on jurisdiction and then I'll get into the power point, which may address some of these other issues, in the event that you --

THE COURT: Well, what I'm going to ask you to do is stop there, so I can take up my other matter. So make your last point on jurisdiction. And then before you move to your power point --

MR. ROBISON: Certainly.

We would just ask that if you don't find jurisdiction, you would just enter an order that doesn't prejudice Superior's rights to go pursue this matter in one of the other forums that you mentioned. Obviously --

THE COURT: Completely agree that that would be perfectly appropriate. If I just don't think I have jurisdiction, we've had an interesting learning process for me and hopefully for each other. But it should not prejudice anyone's rights to -- rights or defenses.

MR. ROBISON: That's all we would ask, if the Court doesn't find jurisdiction. Obviously this is an important issue to the reorganized debtor and we want to make sure that nothing that happens here, if the Court doesn't find jurisdiction, prejudices our right to proceed elsewhere.

THE COURT: Excellent.

MR. ROBISON: With that, I'll yield to the other matter and pick up here in just a minute.

(Brief recess ensued.)

THE COURT: All right, please.

MR. ROBISON: Okay, Your Honor, I'll run through this very briefly. Because, as I mentioned earlier, it deals more with what I would call the underlying merits than the jurisdictional issue, which is what the Court was interested in.

THE COURT: Well, I'm interested in it all. I'm just concerned that if I can't get myself over the jurisdiction hump -- and, quite frankly, you don't want me to stretch on jurisdiction. I've either got it or I don't. And if I don't, you're better off going someplace where you can get this dispute resolved by a Court that can actually hear it.

MR. ROBISON: And I understand the Court's position, certainly.

Okay, Your Honor, I wanted to start with six key facts or key principles that I think are important in resolving this dispute. Number one, the confirmation order that the Court enters requires TAE to return documents and other information owned by Superior. And I mentioned this in my opening. But I'll reiterate, to me the use of the term documents and other information indicates that the plan

proponents here appreciated that Superior not only owned tangible property, but also intangible property and that they intended that it be returned in whatever form it might take. Number two, Superior's ownership of the intellectual property on its drawings was disclosed throughout the bankruptcy case. And what I've quoted here in the power point is the disclosure statement, which states the debtor owns intellectual property related to its PMAs. In my mind, that's what we're fighting about, that intellectual property is what we're fighting about. We're not talking about tangible pieces of paper. We're talking about dimensions, tolerances, notes, things of that nature.

Third point, Superior provided drawings and information for about 360 FAA approved PMA parts to TAE. The drawings were provided in confidence and pursuant to a supplier agreement. Superior's drawings contain all of the information necessary to make the part.

THE COURT: But -- and, you know, it probably doesn't matter. But why would you give them all of the drawings, when they only were manufacturing 48 parts for you?

MR. ROBISON: I don't have an answer to that, Your Honor. I don't know if they were quoting those parts, perhaps, and they needed the drawing to see how the part was to be manufactured. I suspect that would be the answer, but I don't -- I don't know. But as you mentioned, they did only

make 48. And so, I guess to me, that makes me wonder how 312 of those parts, the TAE drawings aren't exactly duplicates. If they didn't do any manufacturing, how could they have added anything to the drawing.

THE COURT: Well, but do we know that they have your drawings -- well, do we -- they've agreed to -- well, subject to whether I have jurisdiction, they've agreed to give you anything that is marked Superior back.

MR. ROBISON: That's true.

THE COURT: Did you find the Superior drawings for all 362 parts?

MR. ROBISON: I believe that's where that number came from, Your Honor.

THE COURT: Okay. And so if the Insolvency Administrator is willing to give all of that -- I mean, I guess my assumption was, from hearing the testimony this morning, that part of what the Insolvency Administrator was, for lack of a better word, agreeing to give back was all of the Superior drawings. And I didn't know the number, but now I do, until this morning for all 362 parts.

MR. ROBISON: That's my understanding, Your Honor.

THE COURT: Okay. So the only thing we're fussing about, assuming they do what they said they were willing to do as early as the preliminary response, is the

TAE created documents that include information from the Superior drawings?

MR. ROBISON: And the 3D models, to the extent those are included in your definition of TAE created documents.

THE COURT: Right.

MR. ROBISON: Okay. Point four, using Superior's drawings, TAE generated the TAE label drawings and 3D models of Superior's parts. Dr. Kubler readily admits that these documents contain Superior's information. And I think what we heard from Professor Rienacker is every single one of them contains Superior's information. Nevertheless, Dr. Kubler will not return the TAE labeled drawings or CAD models. I think we've proven that, instead, his intent is to sell them to Continental or another third party.

And point six, like TAE, Continental participated in Superior's bankruptcy as a prospective purchaser and is specifically mentioned in paragraph 37 of the plan. That's the Teledyne Technologies that you see in paragraph 37.

Now, a little background, as we've talked about at length. Superior's relationship with TAE was governed by a supplier agreement. The supplier agreement expressly recognized that what happened would happen. It says that Superior will provide drawings, related data, and information to TAE so that TAE can perform the supplier agreement. And

in this presentation, I've placed the words data and information in red every time they appear in that supplier agreement just to hit home the point that this isn't solely about the physical drawings that were supplied to TAE by Superior.

Now, the evidence shows that Superior treated the drawings and information that it provided to TAE as confidential. The Court heard from Mr. Abercrombie, Superior's former president and current CFO. He testified that the technical data is the heart of the company and that Superior protects its technical data by including confidentiality provisions and agreements with other suppliers by limiting employee access to the drawing by putting software in place that keeps other employees from accessing the drawing. And then, finally, by placing a proprietary rights legend on the drawing, which you see there on the screen. That was also included in our supplemental hearing brief. It's not in your copy of the slides, because it's a pop up. But the same proprietary rights legend that's in our hearing brief.

The evidence that's been presented also shows that TAE treated Superior's drawings as confidential. The only TAE representative that has testified at this hearing was Jasper Wilson, former head of sales and service for TAE. And he testified that it was common knowledge at TAE that Superior's

drawings had to be kept confidential and that TAE understood that it could only use Superior's drawings to perform the supplier agreement. There's no other evidence to the contrary.

Now, in addition to Superior's bankruptcy pleadings, the Court should look to Section 3.02 of the supplier agreement for evidence of ownership. And I'm not saying this is the end all/be all, but this is certainly evidence of who owned the information in Superior's drawings. Under Section 3.02, Superior and TAE agreed to three things. Number one, they agreed that Superior would retain title to the drawings, same language, related data and information supplied to TAE. Number two, that TAE would maintain the confidentiality of the drawings, data, and information. And, number three, TAE would return the drawings, data, and information to Superior upon termination.

Now, the Court should also look to the supplier agreement to determine what rights, if any, TAE had to use Superior's information. And I think this, again, goes to the issue of ownership. Under Section 3.03 of the supplier agreement, TAE only had the right to use Superior's information to perform the supplier agreement. And we've got the language from 3.03 there on the screen for you.

Now, other than the right to use Superior's information to perform the supplier agreement, TAE was granted no other

right or interest in Superior's information, including the right to place it in its own drawing or CAD model and sell it to a third party. I think these terms of the contract were reflected in the evidence, as well. And we've jumped a slide ahead. But let me go ahead and make this point. As Professor Rienacker testified this morning, there were no proprietary rights stamps on the TAE labeled drawings, which would be indicia of TAE ownership. Additionally, you saw notes on those drawings that say, No change to the manufacturing process for this part without the permission of Superior, which, again, I think is indicia of Superior owning the information on that drawing, not TAE. So in short, I haven't seen any legal basis where -- that would allow TAE to claim ownership of Superior's information by virtue of putting it on a TAE labeled drawing, or by putting it into computer software that generates a CAD model. I think the parties expressly contracted otherwise.

Now, moving quickly through this Schedule 1.02 to the supplier agreement. I wanted to include this, even though it's largely repetitive. The reason I put it in is because it actually goes a little bit farther than 3.01, 3.02, and 3.03 by requiring that seller, which is TAE, would not reproduce or divulge such information without the expressed written consent of Superior. So, again, it goes even beyond what's in Section 3.01 through 3.03.

Now, the confirmation order, I know the Court's familiar with it. I've got it quoted in here. The reason I wanted to put it in is just to emphasize that the language in the confirmation order is consistent with the supplier agreements, documents, and other information. Almost the same language. Granted, it leaves out data. But to me, if all that was intended by paragraph 37 was that TAE would box up and ship back the drawings that Superior sent over in the first place, it could have stopped after the word documents. Other information could be stricken. And there would be no need to include it.

Now, I know the Court has raised jurisdiction on its own initiative. But I think it is worth pointing out that Dr. Kubler doesn't dispute that he has an obligation under both the supplier agreement and the confirmation order to return Superior's property. And then we're back into this issue of property. This is a quote from Dr. Kubler's initial hearing brief. And what I wanted to point out was just the second sentence, Nor does he contest his obligation, whether pursuant to the confirmation order, the supplier agreement, or otherwise to return Superior's property to Superior. And like I said, I know the Court has raised jurisdiction. But it's worth noting, at least in my mind, that that has never been raised by Dr. Kubler. In fact, he's agreed to return things pursuant to the confirmation order, acting as if it's

enforced -- in force and effect, excuse me.

THE COURT: Although, it's not quite fair. They certainly haven't pressed it aggressively. But if you go back and you read the preliminary response, it does note, more as an irony than as an affirmative position, but they note that, you know, this is years after the confirmation order and not once in the continuing relationship has anybody ever said we need to give anything back. Now, it is true that they have never filed a motion specifically asking me to determine my subject matter jurisdiction. And, you know, we've all proceeded as if I have jurisdiction. But as we all know, that doesn't really address the question of whether I can actually hear this, notwithstanding.

MR. ROBISON: I see what you're saying, Your Honor. And all I would point out is that after they took that position, in their preliminary response they agreed to return things to us, pursuant to the confirmation order.

The next slide, I wanted to make the point that there's no dispute that the TAE label drawings and CAD models contain Superior's information. And as I mentioned earlier, what we heard today is that every single one of them does. And they were actually derived from Superior's information. I think Professor Rienacker used the word, necessary, in direct -- in his direct testimony, that Superior 2D drawings were necessary to create the 3D volume models and TAE labeled

drawings. What I've got here is just two quotes from two of Dr. Kubler's pleadings that confirm that fact, that Superior's information is, indeed, in those documents.

Now, from Superior's perspective, I think the Court can stop here. And let me walk through our thinking. TAE had no right to Superior's information, other than to use it in performing the supplier agreement. I think what you heard from Professor Rienacker is that that happened. Now we know that TAE's information is included in every single TAE labeled drawing and 3D model. And from our perspective, that information has to come back to Superior.

THE COURT: But how? Physically, how does that happen?

MR. ROBISON: They can send us back the files, computer files. I think all of this stuff is electronic.

THE COURT: Well, no, no, no, no, no. But there's also information on there that you don't own.

MR. ROBISON: There is information on --

THE COURT: So how -- physically, and maybe I'm saying metaphysically, how do I make them give back information that is included on a model or a document that they created and expended, according to the testimony, thousands of hours to do? But, yes, it does have your -- Superior's information in it. Physically, how do they do that?

MR. ROBISON: I guess they can take their information off of the drawing and send it back. My initial reaction --

THE COURT: But how? How do they take it off and send it back?

MR. ROBISON: I would think just --

THE COURT: A big eraser?

MR. ROBISON: I mean, these are PDF drawings, for the most part. The TAE labeled drawings are maintained in PDF format. The CAD drawings are maintained in a computer software program, as I understand it. Though I'm not familiar with the CAD software, from Professor Rienacker's testimony I understood that Superior's dimensions had to be put into that software so that the 3D model could generate. I assume if they had to be put into that software, they can be taken out.

THE COURT: All right. But that's not what the plan says. That says, return it to you. How do you return information that you've taken out of a CAD model? I'm struggling with the -- and that's why this feels like we're going beyond just return our stuff to us. I don't know how you return information that is sort of intangible information.

MR. ROBISON: I understand that that presents some logistical problems. And I guess let me make one point

or two points on that. Number one, if that was going to be such an issue for TAE and/or Dr. Kubler, I think they should have raised it before the confirmation order got entered.

THE COURT: Well, I mean, no offense, why? They didn't write the plan. They didn't -- you know --

MR. ROBISON: They were the largest creditor and they got half a million dollars out of the 7 million that was paid.

THE COURT: I understand all that too. But the bottom line is, is I've only recently come to have the metaphysical crisis of how would I make them give back data embedded in a document, embedded in a computer model. I'm not sure, you know, no offense, I didn't think of it at the time at confirmation. The debtor wrote the plan. The debtor knew about these models. And the debtor chose this language. So if this was going to present, my word and maybe a poor one, a metaphysical problem of how do you do this, then maybe we should have had more precise language in the plan to address it, other than, return to Superior property and information it owns.

MR. ROBISON: And, Your Honor, I don't know the logistical answer to how that information can be returned. Maybe the way to do it is for TAE to remove whatever information they think they added to the 3D model and send it back.

THE COURT: But, no. See, you don't own the 3D model. You own information in the 3D model. So sending you the 3D model isn't complying with the plan. Because TAE created that 3D model. So at least, unless you give me something more than you've given me so far, TAE owns that model. Now, admittedly, there is information in that model that Superior provided and for purposes of this discussion, that Superior owns. But that's my metaphysical problem. So I've got a model owned by TAE that has embedded in it information owned by Superior and a plan and confirmation order that says, Blah, blah, blah, blah, blah, quote, Shall be directed to return to the reorganized debtor all documents and other information owned by the reorganized debtor. I don't know how you pull information from somebody else's computer model and give it back. So I'm sitting here going, I don't know how to do that, even assuming I have jurisdiction over this fuss.

MR. ROBISON: And I wish I was more of an electronics expert, so I could answer that question. But the way I understand those CAD models, and I think from the testimony that we've heard, if Superior's information -- and I'm going to use the word remove here, not return.

THE COURT: Understood.

MR. ROBISON: If Superior's information was removed from those CAD models, it would be like taking the

poles out of a camping tent. The whole thing would collapse on itself. And that's -- in a way, that hits home our point that they're -- they're TAE labeled drawings, as I call them. And the CAD models have no value to anybody without Superior's information. They're like the tent that won't stand up, because it doesn't have any poles. And that's -- I guess that's what we're both struggling with.

THE COURT: That's why I think the analogy of what you're really asking for is an injunction prohibiting them from using your data is more accurate as to what you're really asking for here, as it relates to the TAE created materials, whether they be the 2-dimensional drawings or the 3-dimensional CAD model. And the reason I say that is because I don't know how to extract bits of information and direct that it be returned to you. I know how to tell them they have to take it out of there. But I don't know how you then return that information to you. I mean, it's a number that was plugged into a computer model. There's no way to return that to you.

MR. ROBISON: Well, necessarily --

THE COURT: Let me finish, please.

MR. ROBISON: I'm sorry.

THE COURT: And then secondarily, so what you really want is, is you want them to have to destroy that model, because embedded in it is your information. Or you

want them to take it out, the effect of which is, from your perspective, to make that meaningless -- what's left meaningless, no monetary value. So basically you want me to tell them they can't do anything with that information. They don't have -- and no offense, either you or Mr. ALexander at the last hearing said, We don't care if they give it back to us. If they'll destroy it, that's fine. Well, but again, the plan doesn't say they have to destroy it. They say, You're entitled to get property owned by -- property and other data, drawings and other date, or other information owned by Superior back. And so that -- I mean, to be blunt, that's what really started tripping me to we've gone well beyond what you've asked for in the motion to enforce, r well beyond what the plan is asking -- requiring be done. Because I don't know how to make them take out a bit of information and give it back to you. I do know how to tell them, You can't use it. It's proprietary. It belongs to Superior. It's not your's. I'm going to enjoin you. Which, no offense, that's an unfair business practice remedy, enjoin them from using our proprietary information. But, again, that's not -- that would be a lawsuit. We don't have a lawsuit. We have a contested matter here. So it's --

MR. ROBISON: Well, and I guess what I'm struggling with -- and I want to move on, because I know I'm taking up way too much of your time on this one slide.

THE COURT: Well, but it's important.

MR. ROBISON: A logistical problem in complying with an order, I don't think should be a get out of jail free card in terms of compliance with the order.

THE COURT: But -- so I sign an order that says return the information. You've already got that. That's the confirmation order, right?

MR. ROBISON: Right.

THE COURT: And they come back and say, How do I do that? So then we're going to have a contempt hearing and we're going to be right back to the metaphysical problem of how do I do that?

MR. ROBISON: And then I guess my second point would be, factually the first step in returning something would be going to get it from where it currently resides. And if we can talk metaphysics here for a second, Superior's information currently resides in the CAD models. So the very first thing that Dr. Kubler would have to do to comply with the order, in my mind, at least, is go take the information out of the CAD model. Now, metaphysically if there's a way to then take that information and ship it to Superior, that would seem to be a way that Dr. Kubler could comply with the order.

THE COURT: But wasn't that something you should have proven to me today, that that is physically

possible? You want me to order them to return information that you claimed to own. So wouldn't that have been part of your case is this would be really simply, all you do is this and then you physically can return it to us? That's part of the question I'm struggling with.

MR. ROBISON: Well, I think what we've heard is that information was inputted in the first place to make the CAD models.

THE COURT: Right. So that means you can delete it.

MR. ROBISON: So you can delete it.

THE COURT: But I can delete something on a type-written page, but then there's no way for me to return it to you. That's the fundamental problem here. Of course it can be deleted. I delete a lot when I'm writing an opinion, Don't like that, and it's deleted. But I can't return the words I deleted. I can't return the numbers that I would delete from the CAD model to Superior. And that's the focal point of the plan provision, which is take it and return it to us. I don't know how you return information that's been deleted.

MR. ROBISON: Yeah. I guess what I would say about that is the -- what the testimony was about why that provision was included in the plan and confirmation order was to keep the information out of the hands of competitors. I

think that's the uncontroverted testimony about the intent. I realize it's the Court's order and so I don't want to put words in the Court's mouth about what the order means.

THE COURT: Well, but no offense, the order just repeats the plan.

MR. ROBISON: I understand.

THE COURT: And I didn't write the plan.

MR. ROBISON: I understand.

THE COURT: Quite frankly, I didn't write the confirmation order, either. I certainly signed it and I certainly reviewed it before I signed it. And it's consistent with the plan. But the debtor or the Creditor's Committee, or both of them jointly wrote the plan.

MR. ROBISON: And I guess where I'm going with that is if the uncontroverted evidence is the intent was to keep it out of the hands of competitors, I think they should at least do their best to return it logistically speaking because of the nature of the computer program that it was loaded into. It can't be physically shipped back across the ocean. There should at least be an attempt made to do that. Because after all --

THE COURT: But, again, if it can't be returned -- and now I'm taking up more time. But I'll tell you, I'm struggling with this. We return -- the language suggests that what was important was to give it back. If it

can't be given back, then I'm not sure that provision addresses is.

MR. ROBISON: Well, and it can be given back. Remember, the way this worked, according to Dr. Rienacker, was Superior supplied the 2D drawing. And then it went to the 3D.

THE COURT: And we made the model.

MR. ROBISON: So the TAE label drawings can be returned.

THE COURT: But those -- you've not shown me that you own those. You don't own the work that TAE created, or at least there's no evidence in this record that you own it. You own information in it.

MR. ROBISON: And if they want to take whatever information they allegedly added off of the 2D drawing, then that's --

THE COURT: But, again, that misses the point. I think it was your burden to prove that you owned that 2D drawing. And, at least, I don't think you did that. And, quite frankly, this could have been so easily addressed in the supplier agreement by a provision that says, Any documents or other drawings or computer models that are created with our information belong to Superior. And, sadly, that's not in your contract. And interestingly, when I first was thinking about that I thought, Well, that's because these

guys were affiliates and, you know, it was sort of a sloppy relationship between a sister corporation. But the reality is, is at the time the supplier agreement was entered into, you weren't sisters. The supplier agreement stated from 2001 and TAG didn't own -- didn't acquire the equity in Superior until 2006. So when this agreement was put in place, you were strangers to each other. You were just a business relationship. So -- and, again, I have no idea what's normal in the industry. But it seems like this is a problem that could have been fixed with a simple contractual provision that basically said, Anything you create using our data still belongs to us.

MR. ROBISON: And two points on that. The word drawings when it appears in 301, 302, 303, is always followed by the words related data and information. And I would submit that that was an attempt to address that issue. The other attempt was the limitation on use. If I've got something, I can only use it for one specific purpose, to perform the supplier agreement in this case, I don't understand how legally I could convert that information to my information.

THE COURT: But see, now -- I'm with you. But that's why this doesn't seem like -- that's another part of the reason why this doesn't seem like a plan enforcement mechanism. The language that's even more helpful to you is

in the supplier agreement. And that language goes well beyond the plan. That talks about you can't use our information for any other purposes. The plan doesn't say that. That's the supplier agreement. And it's the supplier agreement that says, upon termination, we get back and you can't use our stuff for anything other than to manufacture parts for us. That all seems like, again, that your better cause of action is not enforce the plan, but rather enforce the supplier agreement. That's really what you want. You don't want them using this information. And it's not the plan that says they can't use this information. It's the supplier agreement that says that.

MR. ROBISON: And I think in my mind where those two fit together is they've -- Dr. Kubler has always taken the position that we have to show that we own the information. And where I come down on that is, how can Dr. Kubler or TAE own information that it was almost given in trust. I mean, they had this information and they could only use it for a limited purpose. So how could they possibly have an ownership interest in it to take us out of paragraph 37 of the confirmation order?

But let me -- I'm taking up a ton of the Court's time. So let me move on. And I think these questions may come up in other contexts, as well.

THE COURT: Okay.

MR. ROBISON: But moving on to slide 14. There's been a lot of focus in this case on public domain, which is a concept that exists in trade secrets law. And I wanted to point out a quote from Dr. Kubler's reply brief, just to be clear that I think we're in agreement that Superior doesn't have to prove it had a trade secret to prevail. That's -- that's why this quote is in here. And I won't burden the Court by reading it. But I thought it was worthy of a slide.

Nevertheless, the Court at the July 22nd hearing mentioned that intellectual property law may come into play, trade secrets law might come into play. And we looked at that and we briefed it. And I tried to address the issue that the Court --

THE COURT: If you didn't have the confirmation order, what would your lawsuit be?

MR. ROBISON: If there was no confirmation order.

THE COURT: If you were suing TAE because under the supplier agreement they weren't supposed to use your property for any purpose other than to manufactured parts for you and under the supplier agreement, they were required to give it back, what would the nature of your lawsuit be?

MR. ROBISON: Without giving up my contention

that we're in the right court, I think it would be some combination of breach of contract, misappropriation of trade secrets, unfair competition, breach of fiduciary duty. I think those would all be claims that we would assert. But, again, I don't want to give up being in this court, because we do have an order that required them to do something. And I think the evidence was they never did it until we brought it to the Court's attention.

But under trade secrets law, we looked at this issue of what happens if you get somebody else's trade secret and modify it, or improve upon it. And what we found is that is of no legal consequence. Parties have tried that argument and it is routinely rejected. My favorite quote was this quote out of the Rheinhold case from the 5th Circuit where the 5th Circuit was applying the Louisiana Uniform Trade Secrets Act in the context of a mold that was used to make a boat. But as we pointed out in our brief, the Uniform Trade Secrets Act is adopted in Texas. And we cited Texas cases and cases from other jurisdictions.

THE COURT: Right. But your remedy there is to not get their information. It's either money damages or to stop them from using their's. You don't force them to return it to you.

MR. ROBISON: If it were a trade secrets case.

THE COURT: Right.

MR. ROBISON: And I guess the point I'd like to make to take this out of the trade secrets arena is how -- if they've done something that would make them a mis-appropriator under trade secrets law, how could they possibly at the same time be a rightful owner of the property to get themselves out of the coverage of Section 37 of the confirmation order? That was the point I was trying to make with those cases. And they did seem the most on point in terms of the issue that the Court raised, what is the affect of these reported changes or modifications that they made.

THE COURT: Well, but I guess my struggle with that is that even trade secret case law, they don't say that the person who owned the information that was misappropriated then owns the information in the other person's hand. The remedy for misappropriation of a trade secret is money damages or you can't use it, because you misappropriated trade secret. The Courts -- I've never seen a case, and, look, I'm not expert on this. But at least I've never seen a case where the remedy was that which you created, albeit with misappropriated trade secret information and wrongfully created now belongs to the original holder of the trade secret. The remedies that I have seen in any decision is money damages or an injunction that prevents them from using that which they misappropriated.

MR. ROBISON: And I think --

THE COURT: Which then renders that property useless to them. But I've never seen a Court say and, oh, by the way, they now own it because you created it with misappropriated information. So that which you created, now belongs to the victim of your misappropriation.

MR. ROBISON: And I think the Court is correct in that those are the remedies in a trade secrets case. I guess what I would say here is in a way, the remedy has already been fixed. I mean, we've got an order that says, return or documents and information. I mean, the return is something that's -- I mean, that word is unique to the confirmation order and doesn't -- may not exist in trade secrets law. That's why I was initially resistent to --

THE COURT: But it also says, return what we own. And, again, that misses the question that I'm struggling with is, who owns the documents and the CAD model that TAE created?

MR. ROBISON: And I'm intentionally resisting framing the issue that way, because I would rather talk about the information in those CAD models and documents.

THE COURT: Right.

MR. ROBISON: But we can move on to the next slide. I've quoted Professor Rienacker's opinion here that -- as to how these documents were created. The Court heard more than enough about that this morning. I've

provided some examples. Here you see the label off a TAE drawing, label off Superior drawing, same part number, same revision level, same part description.

The next slide is just a screen shot from one of these CAD models. I brought the physical depiction of this part, but I won't trouble the Court with it. What the Court would see, if I held that part up, is in the box right behind me. But it looks exactly like this. It's got Superior's name, part number, just like as depicted in the CAD model.

The next two slides are examples of excerpts from the drawing for SL part -- Superior part Sl18840-2. What you see in the first slide is an excerpt from the original Superior drawing. And what you see in the next slide is an excerpt from the TAE labeled drawing from that same part. And I took just a few seconds to highlight some of the dimensions that are identical, if you were those two, I didn't do all of them, so I don't want there to be any mis-impression that this is an exhaustive comparison. But just so the Court can see some of the dimensions that are exactly the same. And, again, that's one of the drawings that Dr. Kubler does not want to give back and intends to go sell to a third party.

The second point I wanted to make on trade secrets sort of goes to this issue of public domain that Dr. Kubler has tried to raise, especially in today's hearing. I've got a quote from a Texas case out of the Houston Cort of appeals.

Courts condemn the employment of improper means to your trade secrets. The question is not how could he have secured the knowledge, but how did he. What I'd like to focus the Cort on there is that the question, if the Court wants to delve into this public domain argument, is not how could TAE have obtained Superior's information. And I think or heard a lot about that today from Professor Rienacker. The question should be, how did they. And there's no evidence that they got Superior's information out of the overhaul manuals or out of the public domain and put it in these TAE labeled drawings and CAD models. The only evidence the Court's heard is that it came from Superior.

THE COURT: Right.

MR. ROBISON: And then the second part of that quote just makes clear that someone is a mis-appropriator, can be a mis-appropriator if they properly acquire the knowledge, then they use it in breach of a confidence. And that's what we've got going on here. And I put this in again to show the distinction between a rightful owner of something and a mis-appropriator.

The UniServices case I thought was worthy of a slide, as well. Factually, it's as close as what I found to this situation. And it's a little different, I'll give the Court that. But what happened in Uniservices -- and it's an old case. It's a 1975 case, or older relative to some of the

other ones in this presentation. But a debtor was going through a reorganization and there was a Trustee involved. And one of the debtor's principals decides that they want to leave the debtor in the middle of the reorganization. And the Trustee says, Hey, if you're going to leave, you need to sign a non-compete. And the principal says, I'm not going to do that, unless the Bankruptcy Court tells me to. And this person had access to the debtor's trade secrets. So the Trustee goes to the Bankruptcy Court and says, We need to have a declaration as to what this principal can do with my debtor's information. This property, these trade secrets are key to the reorganization of this debtor and we need to know what this principal can do with the information. And what this quote shows is that the 7th Circuit pretty much flat out rejected the same argument Kubler is making here with regard to public domain. This principal tried to say, Well, you could conduct surveillance on the debtor's business and figure out these trade secrets. And by the way, I know, since I worked for the debtor, that these trade secrets were in the hands of competitors. And the 7th Circuit came down on that and said, No, you don't get to make that argument. You got the data in confidence and, therefore, you can't use it.

And the first part of that quote, I thought was instructive. Although the evidence indicates that some of

Crystal's data might be known to competitors, we do not find Crystal's property right insofar as it may be enforceable against Dudenhoffer to be effective. Dudenhoffer is the principal. But it refers to the debtor's rights in these trade secrets as property rights. And in that case, I'm not even sure in what form the trade secrets were written down, if any. They might not have -- it was lists of customers and information related to that customer. And I don't know if there was actually a physical list, or if the principal just knew who the customers were by virtue of his or her experience.

The Court goes on to say, It is immaterial, which I thought was pretty strong, that some of Crystal's competitors may be in legitimate possession of some portion of its trade secret data. So, again, this case is unique in terms of its facts. But this is as close as I found. And, granted, it's not post-confirmation. It was leading up to the plan. We need to figure this out so that we can figure out how this plan is going to turn out.

THE COURT: Right.

MR. ROBISON: But, factually, I did find it fairly similar.

Next slide is about res judicata. I just wanted to walk the Court through that argument. I do feel like the briefing on that has sort of been two ships passing in the

night. But, initially, my thought on res judicata is it bars this public domain argument. The plan and disclosure statement disclose this intellectual property as being owned by the debtor, the intellectual property underlying its PMAs. The PMAs were all included in the bankruptcy -- in the debtor's schedules. That goes on throughout the bankruptcy. The plan gets confirmed. Brantley comes in and pays money. Then Dr. Kubler comes in and say, No, no, no. That information is in the public domain and, thus, you have no property right in it. Which is entirely inconsistent with the idea that the debtor owns the intellectual property underlying its PMAs. I think if that was Dr. Kubler's position, he needed to raise it during the bankruptcy.

Factually, Superior's information isn't in the public domain. If I was, Brantley wouldn't have paid so much money for it. If it was, Dr. Kubler wouldn't be trying to sell it. As the Court heard from Mr. Dedmon, there may have been some drawings in the public domain many, many years ago that you could get from the military. But that's not the case any more.

To sum up, Your Honor. I think we've -- we've met our burden. We entrusted Superior's information to TAE in confidence, limited TAE's rights to the information, which I would say are ownership rights. We cut off any claim that they could have to own the information. They used our

information to create the TAE labeled drawings, the CAD models. We requested that the information didn't -- we requested the information be returned. It wasn't. We think it needs to come back. I know we've talked a lot about logistical problems. But I'll move on to the next slide, because there is one more point I want to make.

In terms of policy. I think there's an important consideration here in that I think what's going on is basically an end run around this plan. I think we've proven that Continental was not a successful purchaser of Superior's assets, including the intellectual property during the bankruptcy. And if what Kubler intends to do with this property comes to fruition -- again, I'm not asking for an injunction. But I just want the Court to understand the context. And, basically, Continental will be allowed to end run this plan and bet what it tried to get out of this Court indirectly. Additionally, Dr. Kubler/TAE will get a double dip. They got a large distribution from Superior's bankruptcy estate. Now they're going to turn around and benefit from Superior's information by selling it to Continental who, again, is also mentioned in paragraph 37 of the confirmation order.

With that, I will yield the floor to any additional questions.

THE COURT: I don't have any. Thank you.

All right. It's 5 minutes until my conference call. So it doesn't make any sense to me to start. So I don't know for sure, this is not my call, but I don't know for sure how long this will take. I'm hopeful maybe 15, 20 minutes. And so as soon as the call finishes, I'll come back out and we'll wrap up.

(Brief recess ensued.)

THE COURT: Be seated, please.

All right. Please, we'll hear TAE's closing argument.

MR. WINIKKA: Thank you, Your Honor. Dan Winikka, for the record. Appreciate Your Honor staying so late today. I will say that I think I can substantially shorten the presentation I was originally intending to make based on the interactions with counsel and what's already been discussed. So I would say I think that's the good news.

Let me start first, Your Honor, I guess with the jurisdiction point Your Honor has raised. Now, unfortunately, I don't have a better explanation for you or argument as to why you necessarily have subject matter jurisdiction over all of the issues between the parties here as they've been presented. I will say that, you know, this is a very important matter to my client. Obviously the Court has invested a lot of time and the parties have invested a lot of time.

If Your Honor would like, maybe it would make sense for

the parties to provide a little bit of briefing on that. It's not an issue we've really had an opportunity to spend much time looking at. Obviously Your Honor raised a good point, as well, is we don't want to get even further down the road and have an Appellate Court decide there was never any jurisdiction and more time is invested. And so it is a very significant issue that might make sense for us to take a look at and maybe provide a short letter brief, if Your Honor would like on that, just because it is a very significant issue and there's already been a lot of time invested. So I would offer that up.

THE COURT: Let me think about that. I mean, no offense, the case law is fairly crisp. So unless you're going to tell me that you think I have subject matter jurisdiction so that both sides here think I do and I'm the only one who's concerned about it -- and, certainly, I'm going to go back and re-look at the Manville decision. But asbestos cases are a bit weird. And that decision, from recollection, is an interesting one. Let me just leave it at that. And it was one that was fairly controversial at the time it came down. But, with that said, let me think about that, Mr. Winikka. I think that would be fairly helpful. I mean, I think the body of case law on post-confirmation jurisdiction is pretty cleanly articulated.

MR. WINIKKA: Okay. I mean --

THE COURT: So, I mean, but answer my question. So what are you telling me? Does TAE believe I have jurisdiction over this dispute?

MR. WINIKKA: Well, my client, the Insolvency Administrator for TAE, would certainly like Your Honor to resolve this dispute, if possible. But you've raised, I think, a question that should be of concern to everybody, given the time and investment. So I think, you know, as the dispute initially started, return of materials and whether or not we had something that Superior owned, it's kind of morphed, to some extend, beyond that.

THE COURT: It has. And, frankly, you know, there is no one who regrets sort of the late surfacing of this issue more than me. But the dispute really has evolved from when it was first filed as a motion to show cause. So I hear you. And, quite frankly, you know, you spent a couple of days down here now, mostly, trying this matter before me. So I regret that we've invested that time and effort. But, again, the Appellate Courts make clear that this Court, even when no party is raising it, has to assess its own jurisdiction. And as the suit has -- as the contested matter has morphed and as some facts become more apparent to me, i.e., the gap between confirmation and the request for return, the fact that the parties did post-confirmation business with each other voluntarily, et cetera, et cetera,

all of that caused me to begin to become concerned that we were beyond what this Court could legitimately do now that the real reason for the bankruptcy was fully resolved.

MR. WINIKKA: Yeah. Well, I will say one thought that did occur to me that we really haven't had time to research is that perhaps it would be the case that the Court had subject matter jurisdiction over an aspect of the dispute that under maybe principles of supplemental jurisdiction.

THE COURT: Doesn't work in a bankruptcy court, 5th Circuit has so ruled.

MR. WINIKKA: Okay.

THE COURT: We either have it under 1334 or we don't have it.

MR. WINIKKA: Understood. Well, let me start, Your Honor, by I think it's important at the outset here to draw a distinction here and really dispel the notion that when we're talking about here information on the TAE created models and drawings that have information that's on the Superior 2D drawings, that we're talking about the primary assets of Superior in this case. Because I think what's occurred throughout the proceedings, to some degree, and some of the testimony and some of the briefing, is Superior kind of lumps together the information on the drawings they provided to TAE where all of their assets underlying, and all

of their data underlying their PMAs and the PMAs themselves. And it may be that the PMAs and the underlying, all of the underlying data supporting the PMAs are the most important assets of Superior. But in this dispute, we're only talking about the information on the Superior 2D drawings that were provided to TAE. And the PMAs, and all of the data underlying the PMAs, include a lot more information than that.

I think you heard testimony that no one could take these Superior 2D drawings and just manufacturer the Superior parts. FAA approval would be required. And to obtain that approval, you know, one has to go through this whole testing and computation process and prove air worthiness to the FAA. And the time and effort that Superior spent to do this testing and get those approvals and obtain those PMAs, you know, may, in fact, have been significant. And then the data underlying that testimony maybe -- I mean, we really don't have any evidence on this, but may be proprietary and extensive. But this proceeding has nothing to do with the actual PMAs themselves, or any of the testing data under the PMAs. And I think that's, you know, important to keep that in mind. So I wanted to point that out at the outset.

Your Honor, I guess I want to start with just very briefly on the facts, because this has already been discussed a fair amount. But I think it's clear from the evidence, I

would say, that the 3D volume models and the 2D drawings that TAE created are not just copies of the Superior drawings. There was quite a bit of evidence about the tremendous amount of engineering work that went into those models, the additional manufacturing information and know how that's reflected on the 2D drawings that TAE created, all of that was created from the 3D models. Some of the TAE drawings were for the interim process, and so they included a whole host of dimensions that aren't even on the Superior 2D drawings. And I think that's, you know, pretty clear from the evidence that that's the case.

So I want to -- I think what I really want to focus on, and it relates to a lot of the questions that Your Honor was asking on, is then the ownership of these TAE created 3D models and drawings. First, obviously, it's Superior's burden to establish that they actually own those materials. And we certainly don't feel like they've met that burden. And I think what Your Honor had struggled with and a lot of back and forth with Mr. Robison had to do with their suggestion that we should -- TAE should somehow be required to return their information and, in effect, remove, or redact, or destroy the TAE information and return to them their information. And I think the problem there is that the fact that the TAE models and drawings contain information that come from the Superior drawings, really does not create

an issue of ownership. They've cited no authority for the proposition that they would own the TAE materials in whole or in part, because the materials contain information that they claim they own. I mean, I think fundamentally TAE owns what TAE created. And the real issue becomes, Your Honor, it's much more of a use and disclosure issue is what we're talking about here. And they're saying, essentially, that they own the information itself. And that is where you get into these issues, I think, Your Honor about whether or not is it a trade secret, is it protectable confidential information. And we believe the evidence shows that it clearly is not.

THE COURT: Well, but -- but you -- your client, TAE, and I recognize at the time the supplier agreement was created, you know, there was no Insolvency Administrator, but that's irrelevant. He's succeeded to whatever rights and obligations existed under the supplier agreement. You agreed that this information could only be used to manufacture Superior parts. And now the reality is is you want to use it for some other purpose. You also agreed to return it at the end of the relationship. And I'm not talking about the plan now, I'm talking about the supplier agreement. And -- so it -- it seems like, irrespective of whether it really is proprietary or really is trade secret, you agreed to these limitations. And now you don't want to live up to those limitations. And so -- so

that's a struggle for me. If I reach the merits, that's a struggle for me, is the contract requires that that information not be used for any other purpose, other than to manufacture parts for Superior. And you want to use it now for another purpose. You want to sell it to a competitor of Superior.

MR. WINIKKA: And if I might respond to that, Your Honor.

First, to the extent the supplier agreement governs here, in light of the rejection, that's another issue. And I did want to point out --

THE COURT: An issue I raised, you didn't. And, frankly, rejection is not termination of the agreement. Rejection is simply a breach of the agreement. And parties breach agreements and then continue to operate pursuant to the terms, notwithstanding the breach. So I don't know want, but you both came in here two weeks ago and told me that you were continuing to do business under the supplier agreement, or you had continued to do business under the supplier agreement. So I'm the only one who worried about rejection and the affect of rejection.

MR. WINIKKA: Well, Your Honor, I think that's superior's position. And they did -- you know, there was testimony about how they thought they were continuing to operate under the supplier agreement. That's not anything

that we necessarily ever agreed to. Our point was just on the --

THE COURT: So what were you operating under post-confirmation? I mean, clearly TAE under Dr. Kubler's administration, was continuing to manufacture parts post-confirmation for Superior. And what was that pursuant to, if it wasn't the pre-petition --

MR. WINIKKA: It would have been just pursuant to the purchase orders that were received.

THE COURT: So you don't think the supplier agreement continued to have any affect between the parties?

MR. WINIKKA: Well, I don't think it makes -- I don't really think it makes a difference, Your Honor, whether it did or not. And that was the point we made when we were arguing about the supplier agreement was that, you know, on this ownership issue, whether the supplier agreement governs or not, you look at the terms of the supplier agreement. That did not create the right in SAP to the TAE created material.

THE COURT: No. But it did create the obligation on you not to use those materials for any other purpose. And you clearly are going to try and use them for some other purpose.

MR. WINIKKA: Yes. And our -- our point on that, Your Honor, is that -- and I'm going to get to that in

a minute here. But the point on that, Your Honor, is that if there's -- if the information itself is readily ascertainable and it's not protectable, confidential information, then any use restriction or restriction against disclosure is just not enforceable.

And I think the case I would point Your Honor to on that particular point is the Allen Richardson case, which is a Texas Court of Appeals case from 1986. In that case, Your Honor, the employer brought a breach of contract action against former employees under employment agreements for under employment agreements that restricted both use and disclosure of confidential information. The Trial Court refused to enjoin the former employees from using or disclosing that confidential information. It goes up on appeal. The Appellate Court affirms, finding that the evidence supported the conclusion. The evidence, said the Trial Court, supported the conclusion that the information that they were seeking to restrict from use or disclosure is, quote, Is readily ascertainable and, therefore, not a trade secret or confidential information.

And, Your Honor, that's our point here, really, is that you heard from Mr. Robison about how the confirmation order refers to information and they've got to return our information. But from a property right perspective they have to have protectable interest in that property. I mean, they

can't own information, unless they have some protectable right in it. And we believe in looking through all of the cases that if it's not -- if it's readily ascertainable, if it's in the public domain or readily ascertainable, it's not confidential information. And a party has no right to prevent use or disclosure in that circumstance. And that's really why we heard a lot of evidence, Your Honor, about whether this information was in the public domain or readily ascertainable, which I do want to get to.

But I want to make sure I've answered Your Honor's question.

THE COURT: I understand.

MR. WINIKKA: So fundamentally, Your Honor, TAE owns what TAE created. And so I think what we are talking about here is, you know, Mr. Robison pointed to this, you have to return our information. And so we're back to what I think, really, is a use and disclosure issue, not an ownership issue. And that's where I think the Court was struggling, to some degree, on that issue.

So what I'd like to do, Your Honor, I guess, is talk a little bit about the evidence regarding whether the information on those Superior 2D drawings is in the public domain or readily ascertainable. Because, you know, that is, Your Honor, in our view critical to this determination of, you know, whether or not they have an ownership right in the

information, or whether they have a right to restrict use or disclosure, or to require destruction of the information. And that's really what it boils down to.

And Your Honor heard from Professor Rienacker that the critical dimensions and tolerances that establish air worthiness for these drawings are available in the engine overhaul manuals, including for new parts. And that, you know, Your Honor, even if these may constitute a minority of the dimensions and tolerances for a particular part. They are the most critical data. He further testified, Your Honor, that the other dimensions and tolerances, one, they may actually -- they could be available in the public domain. As Professor Rienacker explained, he did not do a thorough search. His search was confined to the engine overhaul manuals. But as we heard Mr. Dedmon testify, design data is available from a variety of sources. So it may be the case that the other dimensions are, in fact, available in the public domain. We don't necessarily know. But the important point, I think, Your Honor, is what Professor Rienacker testified was that those other dimensions and tolerances could be determined through the exercise of engineering judgment. And perhaps the measurement of a single part in a fairly -- in a fairly easy manner.

I think, Your Honor, Mr. Dedmon's testimony in the Rolls Royce case corroborates exactly what Professor

Rienacker testified to. You know, he today testified that this -- his prior testimony about all of the information being a public domain, he's now saying that those parts related to -- or that related to engine parts from the 1960s and '70s when Superior was -- PMAs were all based on identicality. But I think Your Honor has prior testimony speaks for itself.

If we can get slide 8 up.

Here's his prior testimony, Your Honor. He -- he said, I may explain by saying that every bit of information that I have sought out to obtain PMAs has been available in the public domain. And he was asked, And what parts -- what are those parts that you had that you sought to obtain PMA approval? Parts for Continental and Lycoming aircraft engines, all of the parts, actually. And then he's asked how many parts he tried to obtain approval for with respect to the Continental and Lycoming engines. And he testified several thousand. And that related to piston engines? Yes. And every single one of those several thousand parts, the information was in the public domain? Yes.

You then heard today, Your Honor, on redirect that he previously testified in his deposition that the parts he was referring to in this Rolls Royce testimony, included the parts that are issued -- at issue in this dispute. And he tried to backtrack from that today. But he admitted that he

didn't get thousands of PMA approvals based on identicality. You know, so although he testifies now, earlier today that he was talking about parts in the '60s and '70s where the PMAs are all based on identicality, he then admitted that they didn't get thousands of parts, PMA approval for thousands of parts based on identicality.

The point is, Your Honor, is I think his testimony just corroborates what Professor Rienacker testified to. And that is, if not all of this information, a substantial amount of this information is all available in the public domain. And to the extent it's not available in the public domain, it's readily ascertainable.

I would point out, Your Honor, that this testimony of Professor Rienacker, all of the information from the Superior 2D drawings is in the public domain or readily ascertainable, no evidence is put on to the contrary that all that information is not readily ascertainable. And to us that's -- you know, that's the key here as to whether or not the use restriction or disclosure restrictions in the supplier agreement, to the extent that agreement still applies, are enforceable.

Mr. Robison, Your Honor, did talk about the Uniservices cases -- I mean the Uniservices case. I would point out that consistent with a lot of the other cases they've cited, Your Honor, they've -- one, they come in and say, We don't have to

prove that this is a trade secret. But then they relied extensively on trade secret cases. And Uniservices, again, establishes the same proposition. That is, it has to be a trade secret to begin with. And, Your Honor, both to be a trade secret or to be confidential information, it cannot be readily ascertainable. And that's why there was so much evidence about that. That's why there's argument about that in the brief. It can't be either. A trade secret, Your Honor, does have additional elements, or factors that don't apply necessarily to confidential information. For instance, I think one of the factors is that there's been substantial expense and time incurred in developing the information. And that would be a factor in determining what is a trade secret. It may not necessarily be a factor in determining whether it's confidential information. But if the information is readily ascertainable, it is not confidential information or a trade secret. And the point we were making in the trade secret case is that it's got to be a trade secret to begin with.

They've cited cases, Your Honor, that have talked about, or implied that if it's a breach of a confidentiality agreement, then that's all that's necessary for a misappropriation of a trade secret. But that's not the case. All of these cases, they start with the premise that it's got to be a trade secret to begin with. And, again, that goes

back to whether or not the information is readily ascertainable. And the only evidence before Your Court is that none of this -- I'm sorry. All of the information on the Superior 2D drawings is, in fact, readily ascertainable. And there's really no evidence to the contrary on that point.

Mr. Robison also along the same lines, discussing some of these trade secret cases, Your Honor, they point to language in some of these cases that say well, it doesn't matter -- and I think he mentioned this in his closing argument. It doesn't matter that you could have obtained it another way. What matters is how you obtained it. And you got it under -- you got it under a confidentiality agreement, or some other form of agreement where the trade secret was provided to you. And I think part of the disconnect there, Your Honor, is that it is the case that information can be a trade secret and another party can go out and through what might be extensive effort, reverse engineer and, otherwise, discover that trade secret information. But it's got to be a trade secret to begin with. That kind of extensive reverse engineering where it takes a substantial amount of effort and expense, you can't -- a party cannot relieve itself of that burden by getting it under an agreement from somebody else. And then when they assert that the -- that there's been a misappropriation of the trade secret, argue that, Well, gee, I could have reverse engineered this information. Other

parties could expend a lot of time and effort and actually obtain this information, so I should be permitted to use it too. And what the Courts are saying there is, No. If you got it in a confidence -- a relationship of confidence, you can't really make that argument. But that -- again, that all presumes that there's a trade secret to begin with. And if it's in the public domain or readily ascertainable, then it's not a trade secret to begin with and you don't really reach that issue. And so I think that's part of the reason that the discussions of some of these cases get confused, because they're looking at trade secret cases and it's got to be a trade secret to begin with. And here, because it's in the public domain or readily ascertainable, it's not a trade secret. And it's not -- it's not confidential information that could be enforced under an agreement, either, Your Honor.

I'm just looking at my notes for a minute.

THE COURT: Of course.

MR. WINIKKA: I guess my final point, Your Honor, would be Mr. Robison suggesting that this is an end run around the confirmation order and plan, because Continental happens to be the party that the Insolvency Administrator had been negotiating with. But we're five years down the road from confirmation of the plan in this case, Your Honor. So I don't think in any way this is any

sort of end run around the confirmation order at all. I mean, the point is, I think, that the information that TAE received is information that anybody could get fairly easily by going to public sources, perhaps get all of it by public sources, or with a little engineering judgment, and a little work could be readily ascertained.

THE COURT: But if that's true, why is it valuable to TAE? I mean, no offense. If it's all easily ascertainable from the engine overhaul manuals, or other public sources, why is Continental willing to pay you money for it? Frankly, they could have -- you know, in the last five years, they could have just gone and created that information for themselves.

MR. WINIKKA: Well, I'm not sure that -- I wouldn't say that that information itself does have any value. I think you're right, it wouldn't.

THE COURT: Why is he going to sell it, then? Why does he want to sell it, if it's not valuable?

MR. WINIKKA: Well, I think what may have value, Your Honor, would be the actual TAE created models and drawings. Those relate exactly to, you know, manufacturing process. You know, maybe not necessarily specifically for Superior's parts, because -- I mean, wouldn't allow somebody else necessarily to manufacture Superior's parts, because they don't have Superior's PMA. They can't take that

information and manufacture Superior's parts. They'd have to go through and get the, as I mentioned, the FAA approval process. But it may be that, you know, a company --

THE COURT: So if Continental buys -- assume that Continental buys the 3D models and the 2-dimensional drawings from TAE. Am I hearing you tell me that under applicable airline regulations, FAA law, whatever the right wording is, that Continental could not manufacture a replacement part because it doesn't have the PMA for that part?

MR. WINIKKA: Well, as I understand it, they couldn't manufacture the exact Superior part.

THE COURT: So how does the manufacturing drawings help them? Because the manufacturing drawings tell them how to manufacture Superior's parts.

MR. WINIKKA: Well, there are other -- Continental, obviously, would have its own replacement parts that are, you know, original equipment manufacturer parts, I suppose.

THE COURT: Right. But how does the manufacturer drawings for a Superior part have any value to Continental, if it can't then use that to manufacture the Superior part? This just doesn't make any sense to me. And the manufacturing specifications on a Superior part would seem to be unique to that part. And so you'd need the

manufacturing specifications or drawings for some other part to manufacturer some other part.

MR. WINIKKA: Your Honor, I mean, I'm speculating here. But what -- the only thing I can think of is that if -- and I don't know how much value any of this necessarily has, as to Continental. But the one thing I could think of, Your Honor, is that if Continental has, you know, similar parts, they're not the same, because they're not under the same PMA certificate. But they're obviously not -- they're not going to be too far different. And it may be that the information on how to manufacture the Superior parts, even though the parts Continental may be manufacturing may have some different dimensions and other things that do not make them identical or exact to the Superior part, but nonetheless, the manufacturing information because the parts are so similar, could have some real value to Continental. But, again, I would have to be -- I'm speculating to some degree, myself.

THE COURT: Okay.

MR. WINIKKA: That was all I have, Your Honor, unless you have further questions.

THE COURT: I do not. Thank you.

Please.

MR. ROBISON: Your Honor, I know it's after 5. I'll be extremely brief. Let me start from the end and work

backwards.

The answer to your question about why the TAE labeled drawings would have value to Continental is because Superior has PMAs to make replacement parts for both Lycoming and Continental engines. If Continental gets that data, it will get all --

THE COURT: I'm sorry, I blanked out for a second. Start again.

MR. ROBISON: The answer to your question about why the TAE labeled drawings and CAD models would have value to Continental is Superior has PMAs to make parts for both Continental and Lycoming engines.

THE COURT: Right.

MR. ROBISON: And I think as we've established, the drawings that Superior sent to TAE were design drawings. In other words, you could make the part from those drawings. That information went on to the TAE label drawing in addition to this alleged manufacturing information. If Lycoming gets that, what they're going to have is Superior's design drawings for Lycoming parts, which they could then take and apply to the FAA for approval on the basis of identicality. And so they could get PMAs and try to make and sell parts for the Lycoming engines. That's why they would have value to Continental.

THE COURT: So Continental is not currently

selling Lycoming replacement parts?

MR. ROBISON: I believe that's correct.

MR. ROBISON: A couple of things legally. The Allen Richardson case, the only case Mr. Winikka referred you to, it's a 1986 case out of the Houston court. That's the exact same court that rendered the Sharma opinion that I think is quoted at slide 22 of my power point. Sharma is from 2007. It's 20 years later. Sharma says, It's not how could you have obtained the knowledge, it's how did you. I'm just not sure Allen Richardson carries a whole lot of weight, in light of what happened in the Sharma case 20 years later.

On the supplier agreement and did it terminate, is it enforceable. I just wanted to point out to the Court that when Dr. Kubler was trying to drag this thing into an arbitration proceeding, pursuant to an arbitration clause in the supplier agreement, he took the position that it was enforceable and it never terminated. I just want to make sure that's clear. And we ask -- we asked what his position was on the supplier agreement in discovery. And after asserting some vague and over broad objections, he stated that the Insolvency Administrator states that he -- sorry. To the Insolvency Administrator's knowledge, the supplier agreement was never terminated. So the way it was characterized by Mr. Winikka was, Well, you heard from Superior on that point, but you didn't really hear from the

Insolvency Administrator. And I just wanted to make sure that the Court hears what the Insolvency Administrator's position was, at least in the interrogatories.

Lastly, Your Honor, I just -- I hate to go back to this, because I know we went round and round on it when I was up here before. But I just -- if you do find jurisdiction, I would hate for this thing to fail for lack of a remedy. And I don't know what options you have available. But it would seem to me that -- I was trying to think of what an analogous situation would be to this. And my co-counsel, Mr. Adams, helped me with one. His example was, Okay. When a debtor is in Chapter 11 and you've got potential purchasers that come in and look at the debtor's books and records, they take the debtor's financial information, most likely under a duty of confidentiality and not to use it, and some of the same provisions you've seen here. And they go back and they put it in their spreadsheets and they run numbers and they come up with projections, and EBITDAs, and things like that to try to determine, you know, what if anything to bid for that particular debtor, or that particular debtor's assets. And, you know, I don't have a personal example to cite the Court to in terms of how those confirmation orders were written and what they say has to happen to that information.

THE COURT: That would be in the context of a sale you said, so there wouldn't be a confirmation order.

And normally in a sale context, under 363 it's produced pursuant to a confidentiality agreement. And the confidentiality agreement dictates what the remedy is; destroy it, not use it, return it.

MR. ROBISON: And I guess the reason I thought that might be applicable is because the -- in addition to TAE, the other parties that are named in paragraph 37, there's some suppliers in there, like TAE. But Teledyne and Lycoming were not suppliers. They were potential purchasers. And that's at least how it was dealt with in this case. But I would think --

THE COURT: I don't know that. I mean, I don't know that that was information given to them in the context of looking at these assets.

MR. ROBISON: I think there was some testimony about that, at least with respect to Continental being an unsuccessful purchaser in Superior's bankruptcy.

THE COURT: Well, no. But you're talking about something different. You're telling me that the reason why they were listed in paragraph 37 is because they got information in connection with the sale. There's no evidence of that on this record.

MR. ROBISON: I thought Mr. Abercrombie had testified to that. But if --

THE COURT: Or at least I don't remember it.

I'll go back and look, but I don't remember it.

MR. ROBISON: I may be mistaken on that. But I just want to emphasize that I hate to have this thing fail for lack of a remedy, rather than, Hey, we tried to give you your information back, but we couldn't because of the intangible nature of the property, or the computer software in which it was embodied. I would just hate for the thing to fail for lack of remedy.

THE COURT: Well, but help me. I mean, I hear you. But I can't create a remedy beyond what the plan creates. Because that's -- even assuming I have jurisdiction, all I can do at this point is enforce the plan and the confirmation order, at the most. And so it's either a remedy that the plan says, or it's not something I can do.

MR. ROBISON: Yeah. And what I don't know is if there would be any room for a clarifying order. And I just, to be quite honest, I haven't looked at that issue.

THE COURT: But that's not before me. Nobody asked for a clarifying order. We didn't try this case on the basis of, Please give us a clarifying order. We tried this case on the basis of, Enforce the terms of the plan and the confirmation order against the Insolvency Administrator for TAE.

MR. ROBISON: And, I mean, I even had the idea of appoint a Special Master to try to figure out how this

could be accomplished. But then I realized that Bankruptcy Courts can't do Masters under, I think, 9031. So I'm fresh out of ideas for the moment. I do want to convey to the Court that I would just hate for this thing to fail for lack of a remedy.

And, lastly, Your Honor, again, if you do find no jurisdiction, which I'm a little confused as to what their position is on jurisdiction after Mr. Winikka's closing. If you want more briefing, fine. If not, whatever the Court wants to do on that.

THE COURT: I'm confused too. I get the feeling that they'd sort of like me to have jurisdiction and resolve this dispute. But as you all know, even if you both wanted me to have jurisdiction, I either do or a I don't. And if I don't, notwithstanding the parties' consent to me doing something, I can't do it. And no offense, that's even -- while it's different, it's even worse now under Stern v. Marshall and the progeny from the 5th Circuit. Bankruptcy Court jurisdiction is shrinking, not expanding. But the one thing we all know is that consent doesn't create federal jurisdiction. It just can't.

MR. ROBISON: Understand. Though I would point out the Travelers case, if the question is jurisdiction on the prior order, I think that is waived, if it's not appealed at the time the order is entered.

THE COURT: Oh, no. I can enforce a prior order. My concern is not -- my concern is we're going well beyond enforcing a prior order.

MR. ROBISON: Well, let me just leave the Court with this. If you don't find jurisdiction, we would again just ask that you don't do anything that would prejudice our rights to proceed in another forum.

THE COURT: Well, I mean, let's just talk about that for a minute.

My intention would be not to prejudice. If I don't have jurisdiction, then I shouldn't have been bothering with this, which should leave everybody in whatever position they were in before we enjoyed each other's company.

MR. ROBISON: And I think under the elements of res judicata, if you said you did not have jurisdiction, it would be hard to argue that anything that came out of this court is res judicata. But --

THE COURT: Amen.

MR. ROBISON: -- I would just ask that that's made clear, so we don't have to hear about it at the next stop, if there is one.

THE COURT: Well, but I -- sadly, I think you're going to have to -- I mean, I don't know how I can make that clear. I either have jurisdiction to entertain the dispute, or I don't. If I don't, then I haven't decided

anything other than I don't think I have jurisdiction. So -- but it would certainly not be my intention to prejudice anyone's rights, if I conclude that I don't have subject matter jurisdiction.

MR. ROBISON: I understand, Your Honor.

If the Court has any questions, I'd be happy to answer them.

THE COURT: I don't think so.

MR. ROBISON: Thank you, Your Honor.

THE COURT: All right. Well, in the 14 plus years I've been on the bench, I don't know that I ever told someone they couldn't file a supplemental brief, if they wanted to. I don't feel the particular need for it. And if anybody is going to file something, it's got to happen very quickly. Because we are going to be working on a decision that, quite frankly, we're already working on. So it's something that we'll be working on promptly. So, again, if someone feels the need to say something further on jurisdiction, I'm happy to receive that. But I would like that to be in within the next 24 hours, if something is going to come in. Otherwise, I appreciate and we certainly will look at Manville and see if I think that clarifies things in my own mind. I'll be honest, the case that I think is most directly on point is Craig Stores. And that was the first post-confirmation jurisdiction case the 5th Circuit, for lack

of a better word, seriously looked at. And the facts are not that dis-similar from here. I mean, it's certainly in a different context. But you may recall that that was a case where the pre-petition credit card processor bank for Craig Stores had its agreement assumed during the bankruptcy. So there was a pre-petition relationship between the parties, just like here. That credit agreement was, or that credit card processing agreement was assumed in the bankruptcy process. And then post-confirmation a fuss developed between reorganized Craig Stores and its credit card processor. And the 5th Circuit concluded that there was simply no post-confirmation jurisdiction, because not -- and, of course, the parties argued that, Well, it was about the agreement that was assumed in the bankruptcy case and so forth and so on. And the 5th Circuit just said, Huh-uh. This is a post-confirmation disputes. The -- there is no more bankruptcy estate to be administered. We don't need broad related-to jurisdiction any longer, because there is no estate left. And so that case seems fairly similar. And, frankly, there are cases from other Circuits that are similar.

So any way, we'll certainly continue to think about it. Because I know the parties have invested some time and effort, and not insignificant time and effort in preparing this case. I guess the only good news I can say is, with all

the work that you've done, if I conclude I don't have jurisdiction, I assume you'll immediately run to some other court that you think does. And the work, while perhaps duplicated in terms of presenting it to the Court, the work at least is available for submission to that Court.

So it's been very interesting. And I guess I'll say it's part of the reason why I always loved being a bankruptcy lawyer and have enjoyed this process, is because we hear interesting things that don't have too much direct relationship with bankruptcy law itself, other than it happens to arise in the context of a bankruptcy because a party to the dispute happened to be a debtor in a bankruptcy case. And this is one of those examples of this Court being presented with some very unique legal issues, or at least unique enough to me that has caused me to spend a lot of time thinking about them. And as a bankruptcy at law nerd, I like looking at interesting issues that I don't necessarily always have to look at. So I appreciate the effort. I wish that this jurisdictional issue had either occurred to me or one of you sooner so that we wouldn't have spent the time we've spent. Because I recognize that litigation is expensive and this now, if I conclude I don't have jurisdiction may well have to be an expense that is, at least, in part re-incurred for both sides. And I truly do regret that, if that's where this ends up. But I think the sooner we figure out if we

have jurisdiction here, the better. Because the worst thing that could happen for all of us is that we wrestle this to the ground, only to have the District Court on appeal or the 5th Circuit on appeal conclude that this was all for not and we're even further down the road in expense and so forth than we are currently.

So in any event, thank you all for the effort that you have put into this. It's been an interesting dispute to hear about and learn about. And we will try and get a decision out as quickly as possible, in part because the real brains of the operation will be leaving soon, and I don't want to lose those brains. So in any event, thank you all very much. You're excused. I'm going to be out here for a few minutes organizing my materials.

(End of Proceedings.)

C E R T I F I C A T E

I, CINDY SUMNER, do hereby certify that the foregoing constitutes a full, true, and complete transcription of the proceedings as heretofore set forth in the above-captioned and numbered cause in typewriting before me.

/s/Cindy Sumner

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